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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS


BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

ORIGINAL

Arizona Corporation Commission
DOCKETED

NOV 05 2014

JODI JERICH, Executive Director

DOCKETED BY 

In the matter of:

PATRICK LEONARD SHUDAK, a single man,

PROMISE LAND PROPERTIES, LLC, an Arizona
limited liability company,

and

PARKER SKYLAR & ASSOCIATES, LLC, an
Arizona limited liability company,

Respondents.

DOCKET NO. S-20859A-12-0413

**SHUDAK'S NOTICE OF
DESIGNATING AND LODGING
TRANSCRIPTS FOR THE RECORD
ON REVIEW**

On October 20, 2014, Patrick Leonard Shudak ("Shudak") filed a complaint, in Arizona Superior Court, Case No. LC2014-000492-001, for judicial review of the administrative decision issued in this action. Pursuant to A.R.S. § 12-904(5), Shudak provides notice of designating the following transcripts of the evidentiary hearing in this action, to be included as part of the record on review:

1. Evidentiary Hearing Transcript, Volume I, dated June 17, 2013 (Pages 1 through 185, inclusive);

2. Evidentiary Hearing Transcript, Volume II, dated June 18, 2013 (Pages 186 through 351, inclusive); and

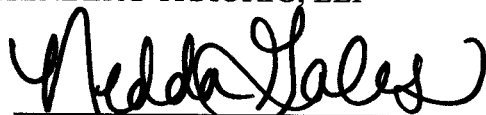
3. Evidentiary Hearing Transcript, Volume III, dated June 19, 2013 (Pages 352 through 428, inclusive).

A true and correct copy of each of the foregoing transcripts is lodged herewith.

DATED this 5th day of November, 2014.

GREENBERG TRAURIG, LLP

By:



BRIAN J. SCHULMAN

NEDDA R. GALES

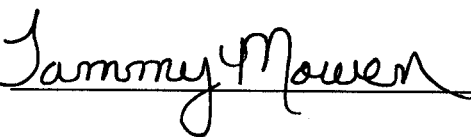
Attorneys for Patrick Leonard Shudak

ORIGINAL and 8 copies of the foregoing hand-delivered on this 5th day of November, 2014 to:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

COPY of the foregoing emailed/mailed on this 5th day of November, 2014 to:

Matthew J. Neubert
Ryan J. Millecam
Arizona Corporation Commission
Securities Division
1300 West Washington Street, 3rd Floor
Phoenix, AZ 85007



1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 In the matter of:)
4 PATRICK LEONARD SHUDAK, a single man;) DOCKET NO.
5 PROMISE LAND PROPERTIES, LLC, an) S-20859A-12-0413
6 Arizona limited liability company, and) EVIDENTIARY
7 PARKER SKYLAR & ASSOCIATES, LLC, an) HEARING
8 Arizona limited liability company,)
9 Respondents.)

10 At: Phoenix, Arizona

11 Date: June 17, 2013

12 Filed: July 8, 2013

13

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 VOLUME I

16 (Pages 1 through 185, inclusive)

17

18

19 ARIZONA REPORTING SERVICE, INC.
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MARTIN HENRY SCHWANK

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 10:00 a.m. on the 17th day of
6 June, 2013.

7

8 BEFORE: MARC E. STERN, Administrative Law Judge

9

APPEARANCES:

10

For the Securities Division:

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GARY W. HILL, RPR, CRR
Certified Reporter
Certificate No. 50812

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1 ALJ STERN: At this point we'll go on the record
2 in the matter of Patrick Leonard Shudak, et al, in
3 Docket No. S-20859A-12-0413. My name is Marc Stern, and
4 I'll preside over the hearing in this matter.

5 At this time we'll take appearances, and on
6 behalf of the Securities Division.

7 MR. MILLECAM: Ryan Millecam, attorney for the
8 Securities Division.

9 ALJ STERN: And on behalf of Mr. Shudak, I
10 believe?

11 MR. SCHULMAN: That's correct, Your Honor.
12 Brian Schulman on behalf of Mr. Shudak.

13 ALJ STERN: And the other respondents are
14 nonrepresented, I assume?

15 MR. MILLECAM: That's correct.

16 ALJ STERN: Have you -- I think I saw in the
17 docket there was a default on something. Did you get a
18 default order on one of these respondents?

19 MR. MILLECAM: Yes, there has been a default
20 ordered in Parker Skylar & Associates.

21 ALJ STERN: What about Promise Land, you just
22 served them, right?

23 MR. MILLECAM: Yes, we served Promise Land, and
24 I did intend to as a preliminary matter talk about the
25 status of Promise Land properties. We served them. The

1 time for them to request a hearing and to file an answer
2 has passed, defaulting them, yes. So during this
3 hearing day, the Division does not intend to present
4 evidence with regard to Promise Land. We will be
5 focusing on Mr. Shudak's role in Parker Skylar and that
6 entity.

7 ALJ STERN: With respect to the fact that you
8 have two respondents and one has already defaulted and
9 it appears that the other one will default -- and I
10 assume you'll put it on for a default order in the
11 not-too-distant future; is that correct?

12 MR. MILLECAM: Yes, the next Open Meeting.

13 ALJ STERN: How many witnesses do you need
14 against one respondent?

15 MR. MILLECAM: Well, we have three, and that's
16 why I wanted to, as a preliminary matter, let you know
17 why we didn't file a list of witnesses and exhibits. We
18 had several and we had several exhibits. When we filed
19 that, the intention was to present evidence against
20 Promise Land.

21 Now that we know that they'll be defaulting, we
22 plan on having three investors as witnesses. We plan on
23 calling them today. We also have two Division
24 employees, an investigator and a fact witness who is an
25 accountant.

1 ALJ STERN: So the hearing, more likely than
2 not, will not run the length of time you contemplated
3 originally?

4 MR. MILLECAM: That's correct. We don't need to
5 present evidence on Promise Land, and several of those
6 witnesses and exhibits were specific to that entity.

7 ALJ STERN: Okay. All right. Anything else?
8 Mr. Schulman, do you have any comment? This is before
9 opening statements.

10 MR. SCHULMAN: Your Honor, just in terms from a
11 scheduling perspective, depending on what happens with
12 the Division's case-in-chief, we are prepared to call as
13 many as four witnesses, but that is all tentative and
14 dependent upon the Division's case.

15 ALJ STERN: Okay. Ready for opening statements
16 then?

17 MR. MILLECAM: Yes.

18 ALJ STERN: Okay.

19 MR. MILLECAM: This case involves a residential
20 real estate development on approximately 1900 acres in
21 Cochise County, Arizona. The Division will show that
22 respondent Patrick Shudak was the person responsible for
23 financing this development.

24 Mr. Shudak was an Arizona resident from at least
25 2007 and through the beginning of 2011. In 2008 he

1 formed Parker Skylar & Associates, an Arizona limited
2 liability company, and he made himself the sole manager
3 of the company. Shudak and Parker Skylar were to raise
4 money and essentially act as the money men for this real
5 estate development. The real estate development would
6 be operated under the entity Cochise County 1900, LLC.
7 This entity was formed to own and develop the 1900 acres
8 of land.

9 The Division will show that in 2008 and 2009
10 Parker Skylar issued notes to 18 investors. The
11 majority of these notes had a two-year term for 14
12 percent interest. These 18 noteholders contributed a
13 total of \$2,142,000 to Parker Skylar.

14 The Division will also show that 17 of these
15 noteholders received membership interest in Parker
16 Skylar. This was in addition to the notes that they
17 received. The documents that they received regarding
18 these membership interests includes the word
19 "percentage." We will show that these persons intended
20 to receive a percentage, that is 1 out of a 100 of
21 Parker Skylar. But as the Division will show,
22 Mr. Shudak and Parker Skylar transferred membership
23 interests totaling approximately 133 percent of Parker
24 Skylar. Some of these transfers were to persons who
25 provided services. The majority were to persons that

1 contributed cash and capital to Parker Skylar.

2 The Division will show that the investors and
3 transferees were, for the most part, unaware of each
4 other's identity or each other's equity holdings in
5 Parker Skylar. Only Mr. Shudak could have done the
6 simple addition necessary to track the total number of
7 interests assigned and to notify the investors of
8 information about the entity.

9 The Division will show further evidence that
10 Mr. Shudak controlled Parker Skylar and that he was the
11 person responsible for issuing the membership interests
12 and the notes. During the relevant time frame -- and
13 that's 2008 through 2009 -- Mr. Shudak managed Parker
14 Skylar. He found and solicited investors. Parker
15 Skylar issued notes and assignments of the LLC
16 interests. These were signed by Mr. Shudak as Parker
17 Skylar's manager. Mr. Shudak controlled Parker Skylar's
18 bank accounts, and he collected and pooled the investor
19 funds into bank accounts he controlled. He then
20 controlled how these funds would be transferred and
21 used.

22 Although the investors expected their funds to
23 go to the development, the Division will show that on
24 several occasions Mr. Shudak transferred funds to
25 himself, to entities he controlled, to an existing

1 investor, and to other persons.

2 The Division will show that several of these
3 entities were in fact being sued by creditors. These
4 lawsuits against Shudak and his companies, along with
5 the transfers from Parker Skylar to Shudak's other
6 companies, were not disclosed to investors.

7 While selling these notes and membership
8 interests --

9 ALJ STERN: Excuse me, is that nondisclosed to
10 investors, is that before they invested, I assume?

11 MR. MILLECAM: For most of them, yes.

12 ALJ STERN: Go ahead.

13 MR. MILLECAM: They were expecting Mr. Shudak to
14 be the financing arm of this entity. While he was
15 raising these finances for Parker Skylar, he did not
16 disclose various other dealings he had going on with the
17 entities that he controlled, and as the Division will
18 show, these entities that he controlled had financial
19 problems of their own, and he was being sued.

20 While selling these notes and membership
21 interest, Mr. Shudak failed to inform offerees of
22 certain facts that would be relevant to a decision to
23 invest in Parker Skylar. One of these factors involved
24 a hard money lender, Nascent Investments, who claimed to
25 have a security investment in all of Parker Skylar's

1 assets. Parker Skylar was to repay the Nascent
2 Investment loan quickly or face a severe increase in
3 penalties and late payment penalties.

4 Unbeknownst to Parker Skylar investors, Nascent
5 considered the note in default.

6 ALJ STERN: What's that name?

7 MR. MILLECAM: Nascent Investment.

8 ALJ STERN: How do you spell that?

9 MR. MILLECAM: N-A-S-C-E-N-T.

10 ALJ STERN: Because I didn't see the name that I
11 recall in the notice. That's why I was wondering.

12 MR. MILLECAM: Yes, it wasn't in the notice. We
13 simply described it as a hard money lender that was
14 undisclosed to investors.

15 ALJ STERN: Okay. Go ahead.

16 MR. MILLECAM: Nascent considered its loan to
17 Parker Skylar in default and was ready to take legal
18 action to enforce its rights in the loan. Nascent has
19 in fact, as of a few months ago, sued Parker Skylar and
20 listed several Parker Skylar investors as defendants in
21 this lawsuit.

22 It's possible that during the course of that
23 hearing Mr. Shudak will attempt to demonstrate that
24 investors have received an interest in valuable land,
25 and therefore, they are not entitled to restitution.

1 The Division, however, will show this argument ignores
2 the fact that Parker Skylar issued two securities.
3 Investors received notes and membership interests. The
4 notes had a set due date and an interest rate. The
5 Division will show that investors did not receive
6 payments on these notes. They remain an outstanding
7 obligation.

8 In addition to these notes, investors received
9 membership interest in Parker Skylar. They did not
10 receive membership interest in Cochise County 1900, the
11 entity that actually owns the land. Parker Skylar was a
12 member of Cochise County 1900, and Cochise County 1900
13 presumably after meeting its own financial obligations,
14 would make distributions to Parker Skylar which would
15 then make distributions to investors.

16 Of course, the Division welcomes any evidence
17 that Shudak will present to the set-off value, but the
18 set-off value would speak to the membership interests
19 which must be remembered are only a percentage of Parker
20 Skylar, and Parker Skylar only owns a percentage of
21 Cochise County 1900. Cochise County 1900 owns the land.
22 Also, that land is encumbered by the loan that would
23 need to be paid off before investors could receive
24 anything.

25 The Division also anticipates that Mr. Shudak

1 will argue that Alan Thome is ultimately responsible for
2 the success of the project.

3 ALJ STERN: Who?

4 MR. MILLECAM: Alan Thome. Alan Thome is the
5 manager of Cochise County 1900. Alan Thome is also a
6 real estate developer. He was the one who has
7 experience with receiving, obtaining plats and
8 entitlements. He and Mr. Shudak got together to form
9 Cochise County 1900. The Division will show that the
10 way it was set up, Mr. Thome was to provide the
11 experience with getting entitlements and plats.
12 Mr. Shudak was to be the money man, raising money from
13 investors to finance the project.

14 We anticipate that Mr. Shudak will argue that
15 Alan Thome is ultimately responsible and that Mr. Shudak
16 was merely the money man. Of course, as far as
17 securities laws are concerned, actions related to
18 raising money from investors are the focus of the law.
19 That's what we focus on today, and that's what we are
20 enforcing.

21 Parker Skylar was the financing arm of Cochise
22 County 1900. Cochise County 1900 did not issue or sell
23 securities. Its manager did not solicit investors. It
24 did not control the accounts or investor funds. These
25 functions were all performed by Parker Skylar and its

1 manager Patrick Shudak. Investors depended on
2 Mr. Shudak to have the capability to properly raise
3 capital for the project and depended on his
4 representations when they decided to invest.

5 ALJ STERN: Okay. Thank you. Mr. Schulman.

6 MR. SCHULMAN: Thank you, Your Honor. I would
7 like to first address the fact that I am here without
8 Mr. Shudak. He's not here, but it's not for lack of
9 interest or any disrespect to the process. To the
10 contrary, Mr. Shudak lives in Hawaii, and he has made
11 several trips to Phoenix over the course of these
12 proceedings to assist his counsel. The Division has not
13 subpoenaed Mr. Shudak to appear at this proceeding.
14 They did not take his EUO. They have not asked for any
15 assurance that Mr. Shudak be present at this hearing.
16 The Division obviously believes Mr. Shudak's testimony
17 is immaterial to their case.

18 In preparing for the hearing, Your Honor, and
19 reviewing the Division's list of witnesses and exhibits,
20 I respectfully believe that there are fundamental issues
21 with the Division's case, and they're not going to be
22 able to satisfy the burdens that the law bestows upon
23 them. Candidly, I don't believe Mr. Shudak's testimony
24 is necessary to address that.

25 Nevertheless, Mr. Shudak intended to be present

1 at the hearing. However, an unexpected family emergency
2 just a couple weeks ago brought him back to the inlands
3 for about a week. He was ready to fly out again, and I
4 assured him that I would convey to Your Honor that his
5 absence was at my advice and not meant as any
6 disrespect, Your Honor, to you or these proceedings.

7 With respect to the case itself, Your Honor, as
8 pointed out by Mr. Millecam, this is a real estate deal
9 that went bad, like virtually every other real estate
10 deal in Arizona during the same time period. In this
11 case, there are some unusual facts that are not in
12 dispute. One of them is that the investors asked
13 Mr. Shudak to step aside in 2009, which he agreed to do.
14 And the investors took over the project along with
15 Mr. Thome. Since then, our understanding and belief is
16 that there has been fighting over what to do with the
17 property among the investors, and they have done nothing
18 to mitigate those damages and potentially avoid those
19 damages claimed by the Division.

20 The other fact issue that will come out through
21 these proceedings is that the members of Parker Skylar
22 apparently have divested Parker Skylar of its only asset
23 by creating a new LLC which is called 1900 Investors,
24 LLC, that has replaced Parker Skylar as a member of
25 Cochise County 1900. And this was done back in February

1 2010, over three years ago.

2 Our supposition is that the lenders of the
3 investment group have finally given up now, and so they
4 have turned to the Division now to backstop their own
5 failed efforts to turn around the project. They could
6 not personally sue Mr. Shudak because the statute of
7 limitations has long since expired. So at least one
8 investor has filed a complaint with the Division, and
9 the Division has run with it since then.

10 I understand the Division's role in protecting
11 investors. I appreciate that role, but these are
12 individuals, all accredited investors, who are using the
13 Division's jurisdiction as a sword, not a shield. As
14 evidenced by the fact that the Division effectively has
15 named the investors themselves as respondents by naming
16 two of the LLCs that they have controlled for many
17 years, this is simply not your usual securities case,
18 and it shouldn't be treated like one.

19 With respect to the actual allegations in the
20 complaint and the notice, let me first address the
21 registration violations. The Division has lumped
22 together at least four discrete and distinct offerings
23 and treated them as one. First, you have the sales of
24 membership interests in Parker Skylar. Secondly, there
25 are assignments of interest without any money changing

1 hands and no evidence of any consideration being
2 exchanged. Third, there is a loan and security interest
3 from an institutional investor, and that's Nascent. And
4 then fourth, there's a loan from a couple here in
5 Arizona, the Hooks. So these are four totally different
6 discrete securities, and the Division has treated them
7 as one for purposes of these projects.

8 But as alluded to by the Division in their
9 opening remarks, while they claim that there are 18
10 investors at issue, by our calculations there are only
11 15 distinct investors who invested in Parker Skylar who
12 actually purchased memberships in Parker Skylar. They
13 are all identified as accredited investors. They all
14 have some preexisting relationship with someone on this
15 project, and Parker Skylar hired an attorney to put
16 together the offering materials. This was by every
17 definition a private offering. No registration was
18 required.

19 With respect to the fraud allegations, let me
20 just say, I am interested to hear what the investors
21 have to say, and I look forward to the opportunity to
22 ask them questions. As a general proposition, though, I
23 do want to emphasize that the Division needs to prove
24 both transactional causation and loss causation. With
25 respect to the latter, Your Honor, in particular the

1 Division must show that Mr. Shudak's alleged fraud
2 proximately caused the damages that are being alleged by
3 the Division. Based on the exhibits and the list of
4 witnesses, I candidly don't believe the Division is
5 going to be able to satisfy that burden.

6 With respect to damages, again, Your Honor, this
7 is not a typical case. In a typical securities case, a
8 promoter raises funds through the sale of securities,
9 personally derives some financial benefit from the
10 proceeds of that sale. The funds could be lost. There
11 could be no assets behind the securities. And
12 essentially, the investors and the funds are never
13 reunited. That is not the case here.

14 In this case, the investors have reunited with
15 all the funds that were put into the LLCs, and they have
16 managed the property and underlying asset for at least
17 three plus years.

18 In this case, it's our understanding that the
19 Division is asking for restitution. Restitution is a
20 well defined term under Arizona law, and it's akin to
21 the concept of unjust enrichment, Your Honor. In sum,
22 unjust enrichment provides a remedy when a party has
23 received a benefit at another's expense and in good
24 conscience the benefited party should compensate the
25 other. The point of restitution is not to create a

1 financial windfall. Here the investors have retained
2 their membership interests in the LLC. They have
3 converted their interest in the Parker Skylar, LLC, into
4 a new interest, the 1900 Investors, LLC, as part of some
5 general kind of exchange offer. They have retained all
6 of the benefit of the money that was used towards the
7 project. That's on their side of the ledger.

8 On the other side of the ledger, the Division
9 needs to prove that Mr. Shudak personally has benefited
10 from the investors expenses. The investors' own records
11 account for virtually all of the funds that were raised.
12 The implication that Mr. Shudak personally benefited
13 from the offering is not supported by the evidence
14 produced by the Division.

15 At this point, Your Honor, since again we were
16 not allowed to any of the discovery requested in this
17 case and we are pretty much relying upon only the
18 evidence that the Division has produced as the exhibits
19 that they're going to use in this case, again, we look
20 forward to the first opportunity to dig into this case
21 and present our own discovery with respect to the
22 defenses on the claims that the Division has brought.

23 ALJ STERN: Okay. You know, I have a question
24 for you, Mr. Millecam. What about this other company,
25 this 1900 that he's talking about and the fact that

1 these investors were running these companies for three
2 years? That's an interesting question.

3 MR. MILLECAM: First off, I guess let me explain
4 just again how this entity and this enterprise was set
5 up. Cochise County 1900 had two members. One was
6 Parker Skylar. One was an entity owned by Alan Thome.
7 Cochise County 1900 was to own the land and develop the
8 land. The investors all invested through Parker Skylar.
9 All of their membership interests, every check they
10 wrote, that went to the Parker Skylar. They did not
11 intend to manage this property. They're not real estate
12 developers. As the Division will show, later on many of
13 the investors noticed there was a problem with the
14 development. Alan Thome alerted them that he had not
15 received the funds that he thought he was going to
16 receive from Parker Skylar.

17 At that point, they sort of bound together. It
18 took them a little while to discover who all the other
19 investors were. When they did, they did make a decision
20 that Shudak was not capable to manage Parker Skylar or
21 be involved. They decided that he hadn't fulfilled his
22 obligations of getting their capital where it needed to
23 go.

24 This was before they knew of several of the
25 other issues, such as Nascent Investment and the sale of

1 133 percent.

2 As far as managing the company, some of them --
3 they had never managed a developing company. They are
4 not real estate developers. They kept Alan Thome in
5 place. They tried to scramble what they could, a little
6 additional capital to make this project work. As you'll
7 see, they failed. They're not real estate developers.
8 The person holding the lien is calling it due and is
9 threatening foreclosure. They have little hope of
10 raising money.

11 ALJ STERN: So this is -- the lien is on this
12 so-called 1900 acres?

13 MR. MILLECAM: Yes, Your Honor.

14 ALJ STERN: And presently the property is
15 titled, I'm assuming, not to Parker Skylar; you're
16 saying there's this other company and Mr. Schulman said
17 the 1900 LLC?

18 MR. MILLECAM: Yes, Cochise County 1900, LLC,
19 always held title. Parker Skylar was formed to raise
20 the capital and get that the money up to Cochise County
21 1900.

22 ALJ STERN: Okay. But then that Cochise County
23 1900 became a different LLC, right?

24 MR. MILLECAM: No, Your Honor. What
25 Mr. Schulman just described is what happened to Parker

1 Skylar and the Parker Skylar investment. This is still
2 run below Cochise County 1900. When they discovered
3 there were problems with Parker Skylar, they banded
4 together and tried to determine who owned what and who
5 should continue to own an interest in the land.

6 When they did that, they formed a new entity
7 called 1900 Investors. In essence, what they attempted
8 to do was replace Parker Skylar with this new entity,
9 and the new entity's purpose was to attempt to do what
10 Parker Skylar did, provide additional capital. The new
11 entity was not to develop the property though or own it.

12 ALJ STERN: Who owns the land now, 1900
13 Investors or --

14 MR. MILLECAM: Cochise County 1900 still owns
15 it. What 1900 investors did is attempted to replace
16 Parker Skylar as a member of Cochise County 1900.

17 ALJ STERN: Who was going to replace someone as
18 a member? The 1900 Investors, is that what you said?

19 MR. MILLECAM: Yeah, 1900 Investors consists of
20 former Parker Skylar investors, people that had invested
21 with Parker Skylar. For their own reasons, they
22 determined that rather than keeping Parker Skylar on as
23 a member of Cochise County 1900, they would get rid of
24 Parker Skylar as a member, replace Parker Skylar with
25 1900 Investors is what they've called their entity.

1 ALJ STERN: So the property, if I went and
2 looked it up in the county records, what would it say?
3 1900 Investors owns this particular piece of property?

4 MR. MILLECAM: No, Cochise County 1900 owns this
5 property.

6 ALJ STERN: Cochise County 1900 owns this, not
7 1900 Investors?

8 MR. MILLECAM: Yeah, they could have been less
9 confusing in the names they chose. But yes, the entity
10 that owns it is Cochise County 1900, LLC. Somewhat
11 confusedly, they formed their entity and called it 1900
12 Investors, LLC, which is a member of Cochise County
13 1900.

14 ALJ STERN: Who else is a member?

15 MR. MILLECAM: Poncho Holdings, Alan Thome's
16 entity. Alan Thome is the real estate developer, the
17 person with the plat and entitlement development
18 experience.

19 ALJ STERN: So this development never took
20 place, right?

21 MR. MILLECAM: No. They've gotten -- it never
22 got much further than getting a few entitlements, I
23 think some water rights. What did occur is after the
24 time frame that's relevant to the Division's
25 investigation.

1 ALJ STERN: Okay. Sounds interesting. Well, I
2 guess we're going to hear your first witness and see who
3 that is and what they have to say.

4 MR. MILLECAM: The Division is going to call
5 Martin Schwank. He's an investor in Parker Skylar.

6
7 MARTIN HENRY SCHWANK,
8 called as a witness on behalf of the Securities
9 Division, having been first duly sworn by the Certified
10 Reporter to speak the truth and nothing but the truth,
11 was examined and testified as follows:

12

13 DIRECT EXAMINATION

14 BY MR. MILLECAM:

15 Q. Good morning, Mr. Schwank.

16 A. Good morning.

17 Q. Can you state your full name for the record,
18 please?

19 A. Martin Henry Schwank.

20 Q. Mr. Schwank, what city and state do you live in?

21 A. Scottsdale, Arizona.

22 Q. About how long have you lived there?

23 A. Since 2004, but I've been in the state since the
24 late '70s.

25 Q. Can you describe your educational background and

1 your work history?

2 A. I've got a bachelor's degree in business from
3 Arizona State. I've got an MBA from UC Berkeley. I was
4 in drug retail for about 25 years, and I was a 50
5 percent owner in a mobile home park in Napa, California.

6 Q. What is your current occupation?

7 A. We sold the mobile home park in '98, and at that
8 time I basically semiretired and managed -- I trade
9 stocks.

10 Q. Mr. Schwank, do you know an individual by the
11 name of Patrick Shudak?

12 A. Yes, I do.

13 Q. How do you know Mr. Shudak?

14 A. I met Mr. Shudak somewhere in '08 as an
15 outpatient at a hospital.

16 Q. Did Mr. Shudak ever approach you about investing
17 in any business opportunities?

18 A. We became friendly, and during the course of
19 just normal conversation, I learned what he was involved
20 with.

21 Q. Do you recall becoming involved in a real estate
22 project with Mr. Shudak in mid 2008?

23 A. Yes, I do.

24 Q. How did you become aware of that project?

25 A. Through just discussions with Mr. Shudak, and

1 like I said, at some point my wife and I became friendly
2 with him, he and his girl friend, and just general
3 discussions of him, people coming into town that he was
4 supposed to meet with, and so at some point we started
5 talking about it.

6 Q. How did Mr. Shudak describe the project to you?

7 A. Basically, as a land development project where
8 there was going to be a large housing segment to it to
9 fill an alleged need down in that area, service the area
10 with the base and with the Border Patrol.

11 Q. And did Mr. Shudak describe a possible role for
12 you in this project?

13 A. Nothing other than an investor.

14 Q. Did you end up investing in this project?

15 A. Yes, I did.

16 Q. And when you invested in this project, you
17 received several documents; is that correct?

18 A. Yes.

19 Q. Before you we have what we've marked as Exhibit
20 S-30; is that correct?

21 A. Yeah.

22 ALJ STERN: You know, I forgot to ask at the
23 outset, Mr. Schulman, are you stipulating to these
24 exhibits that they've submitted, or are you going to go
25 through each one with questions, et cetera?

1 MR. SCHULMAN: Your Honor, I advised the
2 Division that I would stipulate to the records that have
3 been produced with custodian of records letters from the
4 banks; but otherwise, I'm not prepared to stipulate to
5 any documents. But after I hear testimony, I might be
6 willing to stipulate to some of them.

7 ALJ STERN: Okay. So you're only talking about
8 bank records, so essentially you're probably talking, I
9 don't know how many of these -- there's 50 some odd
10 exhibits, I believe. So how many bank exhibits are
11 there, approximately?

12 MR. MILLECAM: About four.

13 ALJ STERN: All right. So when we get to them,
14 we'll deal with it then. If there were more, I would
15 say let's resolve it now. But okay, let's go ahead.

16 BY MR. MILLECAM:

17 Q. Mr. Schwank, do you have Exhibit S-30 in front of
18 you?

19 A. Yes, I do.

20 Q. Do you recognize these as investment documents
21 you received from Parker Skylar?

22 A. Yes, I do.

23 Q. Now, we've divided these into three sets of
24 similar documents. For the first one you see an
25 investment purchase agreement with some additional terms.

1 Next behind that you see a note, and then an assignment of
2 interest in Parker Skylar; is that correct?

3 A. Yes.

4 Q. The first set here we have is with an entity
5 called AshAli Holdings?

6 A. Right.

7 Q. Can you describe what that entity is?

8 A. That was an investment for my two daughters. I
9 was executor of some trusts of theirs, so I took some
10 trust monies of theirs and set up this LLC to invest in
11 a project for them.

12 Q. You signed here as the manager --

13 A. Correct.

14 Q. -- on page 2 here that we're looking at. Also,
15 just as a preliminary matter for clarification, I will
16 refer to a Bates label. That's the number down in the
17 right corner, the ACC 00.

18 A. Right.

19 Q. Where we have Bates, second page of this exhibit
20 is Bates numbered ACC 4463 --

21 A. Right.

22 Q. -- you signed that as manager of AshAli Holdings;
23 is that correct?

24 A. Yes, I did.

25 Q. It says here that you purchased three membership

1 units; is that correct?

2 A. Correct.

3 Q. Down at the bottom, do you recognize the
4 signature underneath Parker Skylar?

5 A. Pat Shudak.

6 Q. How are you able to recognize that signature?

7 A. I've seen it on the documents previously and on
8 other documents.

9 Q. In the next set of investment documents in this
10 exhibit, I see an entity called Lindamar Holdings?

11 A. Yes.

12 Q. Could you describe what that is?

13 A. That's an LLC set up with my wife and I into it.

14 Q. You also signed those documents on behalf of
15 Lindamar?

16 A. Yes, I did.

17 Q. And then the third is just you as an individual?

18 A. Correct.

19 Q. Is it fair to describe all these documents as
20 representing your, Martin Schwank's investments?

21 A. Yes.

22 MR. MILLECAM: Your Honor, we're going to go
23 ahead and move that Exhibit S-30 be admitted into
24 evidence.

25 ALJ STERN: Any objections, Mr. Schulman?

1 MR. SCHULMAN: No, Your Honor.

2 ALJ STERN: No objection is noted, we will admit
3 Exhibit S-30.

4 (Exhibit S-30 was admitted into evidence.)

5 BY MR. MILLECAM:

6 Q. Mr. Schwank, after you signed and executed these
7 documents, did you in fact pay the purchase price
8 represented in these documents?

9 A. Yes, I did.

10 Q. What was the total amount of purchase price that
11 you paid?

12 A. For all of them?

13 Q. Yes.

14 A. Approximately \$360,000.

15 Q. How did you obtain the money that you invested in
16 Parker Skylar?

17 A. Actually it was from a trust I had. Lindamar
18 was monies, and I used to have a free and clear home. I
19 took a mortgage out on my home, and my wife got monies
20 from, she took out of an IRA.

21 Q. What return were you expecting to receive from
22 your investment?

23 A. There's never anything specifically in writing;
24 but in the course of all the discussions that we had
25 over a long period of time, again, hanging out with

1 Shudak and talking about the great possibilities for all
2 this, there was talk of six to eight times our original
3 return.

4 Q. How were you going to obtain that return?

5 A. Basically through, I guess, taking the property
6 to plat, one section of the property to the plat that
7 they were laying out for homes to be built on. Getting
8 a developer involved. Possibly selling it to a
9 developer early on in the project to make monies that
10 way depending upon what the deals were. Or just in the
11 paperwork it says they could refinance at some time.
12 But this was always considered, from my side and my
13 understanding later on from the other investors, as
14 nobody was in this for a long, long term. It was looked
15 at as a two to four-year thing.

16 Q. Is it fair to say that you expected to get equity
17 from the eventual development of this property?

18 A. Yes.

19 Q. And is that through the membership interests that
20 you received in Parker Skylar?

21 A. Yes.

22 Q. In addition to the membership interests, did you
23 also receive a note from Parker Skylar?

24 A. Yeah, my agreement was made up -- and apparently
25 most all of them because I have them all -- of two-year

1 notes at 14 percent, and then the percentage in Parker
2 Skylar, as he described as units, but it's, percentage,
3 unit, they're the same term basically in this.

4 Q. How many membership units did you purchase?

5 A. I originally had, I believe, 20 in all of these
6 entities.

7 ALJ STERN: 20 membership units?

8 THE WITNESS: Uh-huh.

9 BY MR. MILLECAM:

10 Q. Was it your expectation that that would be 20 out
11 of a hundred?

12 A. Well, yeah.

13 Q. You described a note with a two-year term, 14
14 percent interest, and you also describe membership
15 interests. The payments from the membership interests,
16 those were in addition to the payments you would receive
17 on the note?

18 A. According to the paperwork.

19 Q. You described something as six to eight times the
20 return through the equity interests. Why did you expect
21 to receive that return?

22 A. Just through the discussions with Shudak. I
23 mean we had gone down. He and his girl friend drove my
24 wife and I around the properties, showed us the whole
25 area, talked about the growth of the Border Patrol and

1 expanding the station. They talked about the great
2 price they got on the land. There were appraisals that
3 they showed us for basically like \$3,500 or more an acre
4 that they showed. Just discussions of the possibilities
5 of how much per acre this property could be worth once
6 it's pre-developed and/or developed.

7 Q. Where was the capital to come from to make this
8 development happen?

9 A. Parker Skylar.

10 Q. What was Mr. Shudak's role in this enterprise?

11 A. My understanding of his role is he was to raise
12 up to \$2.5 million to finance the purchase of the land
13 and getting the property to plat.

14 Q. Now, prior to your investment, were you able to
15 review the operating agreement of Cochise County 1900?

16 A. Yes.

17 Q. You have that in front of you as Exhibit S-14; is
18 that correct?

19 A. Okay.

20 Q. S-14, just a small clarification, has a different
21 Bates labeling at the bottom. As we'll establish later,
22 this is a document we received from the respondents, so
23 the Bates labeling starts with a P. So I'm going to have
24 you turn to the page that's Bates labeled P 00484.

25 A. Okay.

1 Q. On page 484, just to make sure we're all looking
2 at the same page, it starts with a heading called
3 Capitalization of the Company and Loans; is that correct?

4 A. Yes.

5 Q. And 3.2, section 3.2 about a third of the way
6 down says Member Loans and Additional Capital
7 Contributions?

8 A. Right.

9 Q. You've reviewed this page and this document prior
10 to investing; is that correct?

11 A. Yes.

12 Q. Were you familiar with 3.2.A, the paragraph
13 labeled Entitlement Phase before investing?

14 A. Yes.

15 Q. Can you give us your summary of that paragraph,
16 your understanding of it?

17 ALJ STERN: What's the Bates number, I'm sorry?

18 MR. MILLECAM: It's P 00484.

19 THE WITNESS: My understanding is --

20 ALJ STERN: Go ahead.

21 THE WITNESS: My understanding is that as we
22 were trying to get to entitlement, Shudak was again
23 supposed to raise up to \$2.5 million to get through the
24 entitlement phase and any costs associated with getting
25 there.

1 BY MR. MILLECAM:

2 Q. Does this paragraph accurately understand --
3 excuse me, accurately summarize your understanding of
4 Shudak's role in the development?

5 A. Again, I'm not a lawyer. I just told you what I
6 understood it to mean as best as I could, is that yes,
7 it was supposed to pay for the property, pay for the
8 entitlement phase, and boom, there we were.

9 Q. What was your understanding of Alan Thome's role
10 in the development?

11 A. Allen Thome was the manager of the parent
12 entity, Cochise County 1900, that consisted of him and
13 Poncho Holdings and Parker Skylar, and he was to be the
14 development arm of the entire thing.

15 Q. When you invested in Parker Skylar, did you
16 expect to have any management role in Parker Skylar?

17 A. No.

18 Q. Did you expect to have any management role in the
19 development at all?

20 A. No.

21 Q. We discussed earlier your membership interest in
22 Parker Skylar. As a member of Parker Skylar, did you have
23 any member meetings?

24 A. No.

25 Q. Did you ever receive a list of the other members

1 in Parker Skylar?

2 A. No.

3 Q. Did you ever ask Mr. Shudak for a list?

4 A. Yes.

5 Q. And he didn't provide it?

6 A. No.

7 Q. Did he have an explanation as to why?

8 A. Yeah, I asked a couple different times. Like I
9 said, during the course of this, we were all friendly,
10 but I still had asked him, and he would explain it as
11 privacy issues with other investors. They didn't want
12 to know -- you know, since I had what I thought was a 20
13 percent interest in Parker Skylar, I'm assuming there's
14 four people, five people. Who knows? And never had any
15 indications to think there was any more, any less,
16 whatever, of that. So I kind of understood that or
17 thought okay, that's legitimate. But I asked a couple
18 things. It was always I would like to tell you, but
19 there's privacy issues and these people don't want to --
20 okay, whatever.

21 Q. Did any of your friends or acquaintances ever
22 invest in Parker Skylar?

23 A. Yes.

24 Q. Who were those persons?

25 A. Jack Sanders, an acquaintance, Craig Thomson.

1 Q. Did you introduce them to Parker Skylar?

2 A. Yes.

3 Q. Did they have any relationship with Patrick
4 Shudak before you introduced them?

5 A. Absolutely not.

6 Q. Back to your role as a member in Parker Skylar,
7 did Parker Skylar ever vote on any Parker Skylar
8 decisions?

9 A. No.

10 Q. Did you ever in fact perform any management
11 functions in Parker Skylar?

12 A. No.

13 Q. Did you have access to Parker Skylar's financial
14 information?

15 A. No.

16 Q. Access to its bank accounts or bank statements?

17 A. No.

18 Q. Any access to its expenses or any information?

19 A. No.

20 Q. To your knowledge, did Parker Skylar have any
21 employees?

22 A. No.

23 Q. Your entire correspondence -- well, I guess maybe
24 you could best describe, who would you describe as your
25 point man or the person you communicated with about --

1 A. Pat Shudak. I mean Pat Shudak is the one who
2 presented the investment. Pat Shudak was the money guy.
3 It was all Pat Shudak. Any tours we made were Pat
4 Shudak.

5 Q. Let's go back to describing what you thought you
6 were investing in. Can you describe what you thought your
7 funds were going to be used for when you invested in
8 Parker Skylar?

9 A. Yeah. Specifically, I expected all the funds
10 would be going into the Cochise County 1900, LLC, that
11 was developing the property; and by developing, I mean
12 going through the entitlement phase of getting all the
13 approvals and doing all the engineering work and all the
14 other things that had to be done.

15 Q. Were your funds ever to go to any other purpose?

16 A. No.

17 Q. Did you expect that your funds would be used as a
18 salary for Mr. Shudak?

19 A. Absolutely not.

20 Q. How was Mr. Shudak to be paid for his role in
21 Parker Skylar?

22 A. Well, if Mr. Shudak was supposed to raise \$2.5
23 million and Mr. Shudak was projecting to me that this
24 thing was going to return six to eight times, so if we
25 go on 6, that's \$15 million, half of which according to

1 the original Cochise County agreement was supposed to go
2 to Pat Shudak/Parker Skylar. That's \$7.5 million.

3 Now, depending if Shudak kept any interest for
4 himself in Parker Skylar, there's a large chunk of money
5 to be made right there; and given that he had no dollar
6 investment, it was, you know, here is what you're
7 getting for the efforts that you're making which is a
8 chance to make a whole lot of money, period. So no,
9 there was nothing in the paperwork about salaries.

10 Q. Was Mr. Shudak going to invest his own capital in
11 Parker Skylar?

12 A. Not that I was ever told, no.

13 Q. Was Mr. Shudak going to make loans to Parker
14 Skylar?

15 A. Not to my knowledge.

16 Q. Were any of Mr. Shudak's, any entities controlled
17 by Mr. Shudak going to make loans with Parker Skylar?

18 A. No.

19 MR. SCHULMAN: Objection, Your Honor,
20 foundation.

21 MR. MILLECAM: We're asking Mr. Schwank about
22 his expectations of where his loan would go.

23 ALJ STERN: You can ask him about that, but
24 there has to be some foundation. I don't know who --
25 you're asking the question. I don't know where he got

1 the knowledge from. I would sort of like -- I was going
2 to ask the question myself.

3 MR. MILLECAM: Let me then ask a foundational
4 question.

5 BY MR. MILLECAM:

6 Q. Mr. Schwank, in your conversations with
7 Mr. Shudak, did you ever discuss any possible loans
8 between Mr. Shudak and Parker Skylar?

9 A. No.

10 Q. Did he ever represent to you that that would be a
11 possibility?

12 A. No.

13 Q. Did he ever represent to you that he might
14 possibly be contributing his own capital to Parker Skylar?

15 A. No. I never thought that he was putting a cent
16 into this.

17 Q. These are based on your own conversations with
18 Mr. Shudak?

19 A. Yes, absolutely.

20 Q. Mr. Schwank, let me ask you a little bit about
21 your previous investment experience. Prior to investing
22 in Parker Skylar, did you have any experience investing in
23 real estate developments?

24 A. Not in real estate developments. Like I said, I
25 was a half owner in a mobile home park in Napa, but I

1 didn't develop that.

2 Q. Did Mr. Shudak or anyone at Parker Skylar ever
3 ask you if you were an accredited investor?

4 A. I believe there was a discussion of that, but I
5 don't believe that there's any paperwork that I have of
6 my own that says -- I know in the paperwork it says that
7 while you're signing this, do you say that you're an
8 accredited investor and all that kind of stuff, which I
9 understood that part, that you're supposed to say you
10 have X amount of dollars to be able to afford this
11 investment.

12 Q. Do you understand it because Mr. Shudak or
13 someone at Parker Skylar defined what an accredited
14 investor is?

15 A. I'm sorry, repeat that, please.

16 Q. Did you understand what "accredited" was from
17 Mr. Shudak? Did he describe what "accredited" is?

18 MR. SCHULMAN: Objection, Your Honor. That's a
19 leading question.

20 MR. MILLECAM: I'll rephrase it.

21 ALJ STERN: Thank you.

22 BY MR. MILLECAM:

23 Q. How do you understand -- how did you come to your
24 understanding of what an accredited investor is?

25 A. Just general financial knowledge that I have. I

1 mean I can't tell you specifics of what constitutes an
2 accredited investor, but basically that you're supposed
3 to have enough worth to be able to afford the
4 investment. And in my paperwork, again, it alludes to,
5 you know, you understand that you have to be accredited
6 and things like that, and I was like, okay.

7 Q. Did Mr. Shudak or anyone at Parker Skylar ask you
8 about your ability to withstand a loss?

9 A. No.

10 Q. Did they ever ask you about your net worth?

11 A. No, he didn't ask me that.

12 Q. Did Shudak ever ask you about your annual income?

13 A. No.

14 Q. Did he ever explain to you any risks that might
15 be involved with this investment?

16 A. No. I mean all we ever talked about was the
17 great possibilities of everything and the property was
18 bought at a great price and everything was expanding and
19 all was right with the world. No, there was nothing.

20 Q. When you say it was bought at a great price --

21 A. Correct.

22 Q. -- can you describe what you mean by that?

23 A. Well, again, he had paperwork of appraisals that
24 alleged that the land was worth, the acreage, most of
25 the sections, let's just say roughly to lump it, \$3,500

1 an acre, and they were buying this at basically \$1,000
2 an acre, so --

3 Q. Have you ever received any return on your
4 investment?

5 A. No.

6 Q. Now, at some point you came to think that there
7 was some sort of problem with your investment. Can you
8 describe when that was and how you became aware of a
9 problem?

10 MR. SCHULMAN: Objection, Your Honor. Leading.

11 ALJ STERN: Could you rephrase that question?

12 MR. MILLECAM: I could, but as to that
13 objection, I don't think that that calls for a specific
14 answer. It's very open-ended. I asked him to describe
15 what he experienced and how he became aware of a general
16 situation.

17 ALJ STERN: Aware of what?

18 MR. MILLECAM: How he generally became aware of
19 a problem with his investment. I do not think this
20 calls for a specific answer. I do not feel that this is
21 a leading question.

22 ALJ STERN: Okay. I'll overrule the objection.
23 Go ahead, if you can answer.

24 THE WITNESS: Basically in late 2009, Alan
25 Thome, who I had met once prior to making the

1 investment, so he knew of me and I knew of him. I got,
2 I believe, a phone call from Alan Thome telling me --
3 and I can't remember every word of what happened, but
4 that there was a problem and he was trying to call for a
5 meeting at his office in Mesa with the few investors
6 that he knew or contacts that he knew to discuss the
7 problem.

8 So I went to a meeting at Alan's offices in Mesa
9 with some other individual investors. I don't remember
10 all of them, but Tim Olp was one of them. I believe
11 Jerry Gruetzemacher was one of them. I think Alan's
12 brother was there, Walt, and there were a couple other
13 individuals, but I don't remember their names and
14 specifically who they were.

15 At that meeting, Alan basically said that monies
16 were not coming into Cochise County from Parker Skylar
17 to pay expenses that he had since he had engineers, he
18 had hydrologists, he had you name it.

19 MR. SCHULMAN: Your Honor, I'm objecting to this
20 testimony. It's all hearsay. He's testifying as to
21 what Alan Thome was saying at a meeting.

22 ALJ STERN: Okay. Mr. Millecam.

23 MR. MILLECAM: This is not -- at this point this
24 is not being offered to prove, it's not being put forth
25 to prove the matter asserted by Alan Thome. The point

1 of this testimony is to show that he was at a meeting
2 and discovered a problem. We are not at this point
3 trying to establish everything that Alan Thome said was
4 a problem, merely that there was one described to him.

5 Moreover, hearsay is admissible at
6 administrative hearings so long as there is a foundation
7 and reasonable need. This relates directly to his
8 understanding of what a problem was with his investment.
9 He was at the meeting. He's describing things that he
10 himself witnessed.

11 ALJ STERN: Sounds good to me. I'll overrule
12 the objection.

13 Are you ever going to do anything with S-14? I
14 don't believe you moved it into evidence.

15 MR. MILLECAM: Again, I'm sorry about that. I
16 would like to move S-14 into evidence.

17 MR. SCHULMAN: I object, Your Honor. It's not
18 an executed copy of an agreement. There's no signatures
19 to it. I have no idea whether it's a draft. I don't
20 know if it's the final copy. I don't know if it's the
21 executed copy. There has been no foundation laid with
22 respect to that document. So we object.

23 MR. MILLECAM: Your Honor, we asked Mr. Schwank
24 if he had reviewed this document, if he was familiar
25 with specific paragraphs and contents in it prior to

1 investing. He identified those and even described his
2 understanding of those at the time he invested.

3 MR. SCHULMAN: Your Honor, the witness is not a
4 member of this LLC that is S-14.

5 MR. MILLECAM: Your Honor, can I point out an
6 additional fact? If you look at the Bates label down at
7 the bottom of this, this is a document provided by the
8 respondent.

9 ALJ STERN: Where does it say --

10 MR. MILLECAM: It says P 00472. If you would
11 like to not admit it, we can hold off until we have our
12 investigator establish the foundation of that Bates
13 number and that we received this from respondent.

14 ALJ STERN: Excuse me, I see P 00472.

15 MR. MILLECAM: Yes.

16 ALJ STERN: How does that establish it came from
17 this gentleman?

18 MR. MILLECAM: I'm sorry, that was a second
19 point of why this should be admitted. We received this
20 particular copy from respondent himself, Mr. Shudak.

21 ALJ STERN: Oh, from Mr. Shudak?

22 MR. MILLECAM: Yes. The separate Bates label
23 there is from Mr. Shudak. That is in addition to the
24 fact that this respondent has identified it as a
25 document that he read and is familiar with the terms of.

1 MR. SCHULMAN: Your Honor, my objection is that
2 to the extent that the Division is representing that
3 Exhibit 14 is the final copy of the operating agreement
4 of Cochise County 1900, LLC, foundation has not been
5 laid to establish that.

6 ALJ STERN: Mr. Millicam, do you have any
7 further comment on S-14?

8 MR. MILLECAM: Well, at this point we are
9 offering it as a document that was reviewed by an
10 investor who had an understanding of this document. He
11 has identified the relevant portions, that he was
12 familiar with them and read them.

13 At this point, Mr. Shudak has not provided any
14 evidence that the paragraphs that we just went over are
15 any different from the ones that the investors saw.

16 ALJ STERN: Do you recall when you saw this
17 agreement?

18 THE WITNESS: I have signed copies of it. Yeah,
19 I saw it back when I first invested.

20 MR. MILLECAM: The copies, the signed copies you
21 have, are they similar to this one, substantially
22 similar?

23 THE WITNESS: Yes, yes.

24 ALJ STERN: I would say there's sufficient basis
25 for this to be admitted. Based on his testimony, I

1 understand it's not an official copy or a signed copy,
2 but being that this is an administrative hearing, we
3 have a bit of leeway, we can take into account. So
4 Exhibit S-14 will be admitted.

5 MR. SCHULMAN: Your Honor, for the record.

6 ALJ STERN: Yes, sir.

7 MR. SCHULMAN: The fact that we made discovery
8 requests in this case that were denied in their entirety
9 and this witness has just testified that he has fully
10 executed copies of this agreement that we were never
11 provided in this case, it puts us in a position where we
12 can't challenge the foundation for this document. So we
13 just want it noted for the record that if our discovery
14 request had been granted, even in part, we might have
15 been able to get copies of the executed agreement that
16 purports to be Exhibit 14.

17 ALJ STERN: I guess, but I think Mr. Millicam
18 said that the fact of the matter is on this particular
19 document, it came from your client. So under those
20 circumstances, as I said, this is an administrative
21 proceeding. This isn't the Superior Court where your
22 standards would be a little bit higher; and for purposes
23 of our proceeding today, I'll admit it. So go ahead.

24 (Exhibit S-14 was admitted into evidence.)

25 MR. MILLECAM: And I apologize for not

1 introducing that earlier. Thank you, Your Honor.

2 BY MR. MILLECAM:

3 Q. We were discussing a meeting you had with members
4 after you came to understand that there was some sort of
5 problem with your investment. I believe you listed a few
6 people that were there. Had you met any of these people
7 before this meeting?

8 A. No.

9 Q. Of those that identified themselves as Parker
10 Skylar members at this meeting --

11 ALJ STERN: Could you sort of put a time frame
12 on it? Do you recall what year it was you met these --

13 THE WITNESS: Yeah, yeah. This was again in
14 late 2009, Alan Thome called for the meeting. I have
15 e-mails from back then that say that, he was calling for
16 the meeting.

17 BY MR. MILLECAM:

18 Q. So of those persons at the meeting that
19 identified themselves as Parker Skylar members, had you
20 met any of those persons before?

21 A. No, I had never met any other Parker Skylar
22 members, period, other than the two individuals that I
23 introduced.

24 Q. Now, after this meeting, were you able to locate
25 other Parker Skylar investors?

1 A. Yes. That meeting led to us working on locating
2 as much as possible each and every person that may
3 possibly be in this.

4 Q. Did that process eventually result in you having
5 contact with any other Parker Skylar investors?

6 A. Yes. It took months, but yeah, it was a long,
7 drawn-out process, a lot of which Tim Olp was very
8 involved in.

9 ALJ STERN: Who was?

10 THE WITNESS: Tim Olp.

11 ALJ STERN: Who is he?

12 THE WITNESS: Tim Olp is another member of the
13 investment group of Parker Skylar.

14 ALJ STERN: Okay.

15 THE WITNESS: Tim was at that meeting with Alan.
16 Tim was a preacher on the west side of town. He and I
17 were in town, so both of us kind of took -- since we
18 were here and most of the rest of the investors were out
19 of state, we kind of took the reins of trying to track
20 it down along with a name that Alan had, John Schnaible,
21 who had been, I guess, a financial advisor to some of
22 the guys up in Nebraska and Iowa. So then we just went
23 through the process of you find one and find another,
24 and they just kept coming out of the woodwork.
25 BY MR. MILLECAM:

1 Q. Did you ever compile a list of these persons?

2 A. Oh, yeah.

3 Q. And from this list, you were able to contact
4 these persons; is that correct?

5 A. Yeah.

6 Q. Before you, you have Exhibits S-16 through S-33.
7 I'm going to ask a few questions. These are investor
8 documents, what the Division identified as investor
9 documents.

10 ALJ STERN: Excuse me, Exhibits what to what?

11 MR. MILLECAM: S-16 through S-33.

12 ALJ STERN: 15?

13 MR. MILLECAM: 16.

14 ALJ STERN: Through S-33?

15 MR. MILLECAM: S-33.

16 BY MR. MILLECAM:

17 Q. Let me ask you a few questions about these
18 documents, Mr. Schwank. In the course of your -- once you
19 were able to get this list and contacted persons, did you
20 ever come in contact with Mr. Timothy Banghart?

21 A. Yes, I did.

22 Q. Did you request Mr. Banghart send you documents
23 related to Parker Skylar?

24 A. We received documents in a number of different
25 ways.

1 Q. Okay.

2 A. I'll explain. Tim Olp had known Shudak
3 previously and had sort of a rapport. So Tim had gone
4 to Shudak trying to see if by some chance he could get
5 copies of all of these documents from Pat Shudak. So
6 that was our primary means of getting documents.

7 Secondly, we contacted other people, if we
8 didn't think we could get everything there; but that was
9 the primary means of it. There were others that came in
10 later like Van Hook.

11 Q. So you did have contact with Mr. Timothy
12 Banghart?

13 A. Yes.

14 Q. Do you recognize S-16 as documents provided to
15 you by Mr. Banghart?

16 A. Yes.

17 Q. Similarly, did you have contact with Mr. Gary
18 Bates?

19 A. Yes.

20 Q. Did you get documents from Mr. Bates as well?

21 A. Yes.

22 Q. Do you recognize Exhibit S-17 as the documents
23 received by Mr. Bates?

24 A. Yes.

25 Q. Similarly, did you come in contact with Mr. Steve

1 Berendes?

2 A. Yes, I did.

3 Q. And do you recognize Exhibit S-18 as documents
4 Mr. Berendes provided?

5 A. Yes.

6 Q. Did you come in contact with a Rosan Knapp?

7 A. Actually, that's Jerry Gruetzemacher's wife.

8 Q. Do you recognize S-19 as Ms. Knapp's documents?

9 MR. SCHULMAN: Objection. Your Honor.

10 Foundation.

11 ALJ STERN: Mr. Millicam.

12 MR. MILLECAM: Your Honor, Mr. Schwank just
13 described a process by which he contacted investors and
14 received documents from them. He's now verifying one by
15 one that he had contact with these persons and these are
16 the documents received. I can ask -- for the documents,
17 let me ask maybe some more broader general ones if you
18 would like additional questions, if that's insufficient.

19 ALJ STERN: Okay.

20 BY MR. MILLECAM:

21 Q. The documents we've described so far, do you
22 recognize the signature of Parker Skylar's representative
23 in those documents?

24 A. Yes, in all of them. My answer is I might be
25 able to help. I have copies of each and every one of

1 these, signed copies of them, of every one of these
2 agreements at home.

3 Q. So Exhibit S-16 through S-33 you have signed
4 copies?

5 A. Yes, sir, of everything.

6 Q. You recognize the signatures on those documents?

7 A. Uh-huh.

8 Q. Do you recognize those signatures as Patrick
9 Shudak's?

10 A. Yes.

11 Q. Do you recognize those documents as investment
12 documents in Parker Skylar?

13 A. Yes, I do.

14 Q. How are you able to recognize them as such?

15 A. I've read each and every one of them. I've
16 lived and breathed this thing for at least the last
17 three and a half years. I've dealt with the people for
18 the last three and a half years. I'm very familiar with
19 the documents.

20 Q. The documents received, were they in any way
21 familiar to you? The documents you received from these
22 investors, were you able to recognize them, say, due to
23 provisions or terms in them?

24 A. These documents, most of these documents, not
25 each and every one of them, are extremely similar in

1 that they're all two-year loans at 14 percent, and then
2 they have an assignment of interest in Parker Skylar.
3 Some are a little different. Some vary some. They're
4 all different percentage units for different amounts of
5 money. There's different assignments of interest, yes.

6 Q. The documents you received from these investors
7 you provided to the Division; is that correct?

8 A. Yes.

9 ALJ STERN: So if I understand correctly,
10 Exhibit S-16 through S-33 represent 17 sets of investor
11 documents that you have in your possession that are all
12 signed?

13 THE WITNESS: Yes.

14 MR. MILLECAM: Your Honor, we're going to move
15 that these Exhibits 16 through 33 be put into evidence.

16 ALJ STERN: Okay. Mr. Schulman?

17 MR. SCHULMAN: Your Honor, I mean these are
18 foundational documents that purport to evidence these
19 investments made by each one of these investors, and we
20 have just another investor who is testifying that these
21 are the actual documents that support each investment
22 when there's no foundation underlying that, frankly, the
23 assumption on Mr. Schwank's part.

24 He asked for records, according to his
25 testimony, from these other investors, and they sent him

1 records; and based on that thin testimony, this then is
2 supposed to be the foundation for which the rest of
3 their case is based on. We very much object to, that
4 foundation has not been established with respect to each
5 of these documents.

6 ALJ STERN: Do you want to see the canceled
7 checks?

8 MR. SCHULMAN: Your Honor, absent some
9 additional testimony from this witness, he's just
10 another investor in this case. There's no subpoena from
11 a custodian of records for the LLC. Again, Your Honor,
12 this ties back to the oddity of this case. These
13 investors have been running this LLC for over three
14 years, not my client. He does not have these documents.
15 So at the very least, Your Honor, we should be entitled
16 to some type of formality with respect to the very
17 foundation documents of these particular documents.

18 ALJ STERN: I think, if I understand you
19 correctly and your objection -- and I appreciate your
20 objection. But the witness is under oath. He's
21 testifying he has copies of these signed agreements in
22 his, I assume in his possession, not necessarily with
23 him. And I think what you're alluding to is you don't
24 know what has happened to the entity or whatever it is
25 that they invested in down in Cochise County since, for

1 the past, approximately, if I understand the timing of
2 this. Since 2009, your client has been out of the
3 picture.

4 And I think your argument, more likely than not,
5 would go to possibly, if there is a violation of the
6 Securities Act, would be something that would set off
7 restitution amounts under the rules of the Commission
8 and which the Division would have to disclose to your
9 client. I mean ultimately there's a certain amount of
10 money that was invested in this offering. I heard a
11 number bandied about \$2 million or so.

12 If in fact that's the number that ends up being
13 what the best evidence is, let's say, and let's say the
14 Commission would conclude that there was a violation of
15 registration requirements of the Act or something, then
16 I can see, okay, people invested. But really, that
17 investment turned out to be worth \$3 million. I think
18 in fact there was a consent order on the last agenda
19 where the investors had gotten back more than they paid.
20 So there are instances that this works out.

21 Are you saying that your client is unaware of
22 what the value of everything is at this point?

23 MS. SCHULMAN: Well, I would say that, Your
24 Honor. But with all due respect, that's not where I was
25 going with my objection. My point is, Your Honor, take

1 these documents in the aggregate like we did -- for
2 example, I just happen to be open to Exhibit S-31, which
3 according to this exhibit, this was produced directly
4 from Mr. Swandal who is one of the investors to Robert
5 Eckert who is one of the investigators at the Securities
6 Division. So that appears to be how the Division
7 received this copy.

8 The point of my objection, Your Honor, is I
9 don't dispute this witness's testimony that he received
10 copies of these documents. But that's the extent of his
11 knowledge about these documents. He does not have any
12 foundational testimony about the signatures on the
13 documents, the circumstances of when the documents were
14 signed, whether these are in fact the documents that
15 evidenced the investments.

16 All he can testify to is that he asked investors
17 for their paperwork, and some of the investors sent him
18 paperwork, and this is what he has. Yet, the Division
19 is going to be using these exhibits as the very basis of
20 their arguments that certain investors made certain
21 investments in Parker Skylar. And to get that
22 information through this lay witness is inappropriate
23 and lacks the necessary foundation, even with the lax
24 rules here at the Division.

25 ALJ STERN: Okay. Do you have anything to

1 respond with, Mr. Millecam?

2 MR. MILLECAM: Well, we're not basing this
3 solely on his testimony. He also identified these as
4 familiar documents that provisions are substantially
5 similar.

6 I can also point out that we've already admitted
7 Exhibit S-30 into evidence which are the documents which
8 he said -- we are willing to take the time to go through
9 and point out how identical these provisions are with
10 the exceptions of names and numbers. He's identified
11 the signatures as Mr. Shudak's. The documents are
12 business documents from Parker Skylar.

13 ALJ STERN: Yeah, under the circumstances, I
14 appreciate your objections, Mr. Schulman, and if
15 ultimately there is a Commission decision adverse to
16 your client, perhaps a court, the Superior Court would
17 disagree with the ruling on this. But for purposes of
18 an administrative proceeding, I think the witness has
19 established that he is familiar with the agreements.
20 The exact dollar amounts, he may not have been a
21 personal party to those agreements when they were signed
22 and whatever happened; and for that matter, maybe you're
23 going to put on clients who will say or investors who
24 will say they never invested. I don't know what will
25 happen.

1 But, in any event, I'm going to overrule your
2 objection. So Exhibit S-16 through -- well -- 30 is
3 already admitted. So it's Exhibits S-16 through, I
4 guess, Exhibit S-29, and then 31 through 33. Is that
5 what you're saying?

6 MR. MILLECAM: Yes, Your Honor.

7 ALJ STERN: I'll admit those, and see what
8 happens in the future. Go ahead.

9 MR. MILLECAM: Thank you, Your Honor.

10 (Exhibit S-16, S-17, S-18, S-19, S-20, S-21,
11 S-22, S-23, S-24, S-25, S-26, S-27, S-28, S-29, S-31,
12 S-32, and S-33 were admitted into evidence.)

13 BY MR. MILLECAM:

14 Q. Mr. Schwank, as you were corresponding with some
15 of these investors, did you also receive any evidence of
16 payment, such as canceled checks, wire transfers, any
17 documentation of payment from these investors?

18 A. Yes.

19 Q. I believe you have in front of you what we've
20 marked as Exhibit S-53.

21 ALJ STERN: Which one are you on now?

22 MR. MILLECAM: S-53a. Let me very quickly make
23 sure that you have -- it's S-53, Your Honor, divided
24 between "a" and "b". We made this addition recently. I
25 hope we provided you with a proper copy.

1 ALJ STERN: I have S-53a and S-53b here.

2 MR. MILLECAM: Okay. At present we're going to
3 look at S-53a.

4 BY MR. MILLECAM:

5 Q. Mr. Schwank, do you have a copy of that?

6 A. Yes, I do.

7 Q. Let me go ahead and, do you recognize Exhibit
8 S-53a?

9 A. Yes, I do.

10 Q. What is the first page of that?

11 A. It's an e-mail from me just stating that
12 enclosed are some check copies from other members of our
13 LLC. Hope this helps you find out where the money went.
14 You may receive more of these in the mail from more of
15 our members, also.

16 ALJ STERN: Who is the letter to?

17 THE WITNESS: This was to Mike.

18 MR. MILLECAM: I can ask another foundational
19 question or two.

20 BY MR. MILLECAM:

21 Q. Did you ever correspond with an investigator at
22 the Division named Mike Rice?

23 A. Yes.

24 Q. Did he request documents from you?

25 A. Yes.

1 Q. Is this letter part of your response to this
2 request?

3 A. Yes.

4 Q. In this letter you describe that you were able to
5 receive additional information from some fellow investors
6 in Parker Skylar. Can you go ahead and flip to the second
7 page of this exhibit. At the bottom it's marked ACC 0043.

8 A. Yes.

9 Q. Do you recognize this as a check from
10 Mr. Livingston to Parker Skylar?

11 A. Yes, I do.

12 Q. And you received this from Mr. Livingston through
13 correspondence with him?

14 A. Yes.

15 Q. Similarly, can you flip to the page, ACC 48?

16 A. Yes.

17 Q. Can you describe what this document is?

18 MR. SCHULMAN: Objection, Your Honor. Same
19 objections as before. I understand that this witness
20 can testify perhaps that he received these documents
21 from these investors, but there has been no foundation
22 laid that this witness can testify that these documents
23 are what the Division is asking about.

24 ALJ STERN: Mr. Millecum.

25 MR. MILLECUM: I can ask a few more questions.

1 ALJ STERN: Go ahead.

2 BY MR. MILLECAM:

3 Q. You received these documents -- let's go back to
4 the other one. You received this document from
5 Mr. Livingston, correct?

6 A. Yes.

7 Q. Did you receive it in response to an inquiry into
8 Mr. Livingston?

9 A. Did I inquire?

10 Q. Did you ask him --

11 A. Did I ask him?

12 Q. Yes.

13 A. Yes. In the course of tracking down all the
14 investors and trying to put back together, we requested
15 documentation from everybody of their investments.

16 Q. And this is what Mr. Livingston provided?

17 A. Yes.

18 Q. He provided it as evidence that he invested in
19 Parker Skylar?

20 A. Yes.

21 MR. SCHULMAN: Objection, Your Honor. That's
22 hearsay.

23 ALJ STERN: Overruled. Go ahead.

24 BY MR. MILLECAM:

25 Q. Is there any indication that Mr. Livingston

1 forged these documents?

2 A. No.

3 Q. Provided false checks to you?

4 A. No.

5 Q. We also have admitted Mr. Livingston's investment
6 documents as -- let me get the right number -- Exhibit
7 S-22.

8 ALJ STERN: You went from S-53; now you're at
9 S-22.

10 MR. MILLECAM: Forgive me, Your Honor. I
11 bounced back. I was going to describe a little
12 additional foundation to this check. Perhaps we have
13 enough already.

14 BY MR. MILLECAM:

15 Q. When you received these documents from people
16 evidencing their payments, did you check to see if that
17 was consistent with the investment agreements that they
18 had?

19 A. Yes.

20 Q. And were they, to your knowledge?

21 A. In general, yes.

22 Q. So you previously had knowledge that, for
23 example, Mr. Livingston, Mr. Olp were Parker Skylar
24 investors?

25 A. Yes.

1 Q. They had entered agreements, the agreements we
2 already discussed?

3 A. Yes.

4 Q. And these payments were consistent with those
5 agreements?

6 A. Yes.

7 Q. If you flip through to page 4 of this, this is a
8 check from yourself to Parker Skylar; is that correct?

9 A. Okay.

10 Q. Do you recognize the last three pages? That
11 would be ACC 38, 39, and 40, as copies of checks that you
12 wrote to Parker Skylar?

13 A. Yes.

14 MR. MILLECAM: Your Honor, we're going to move
15 S-53a be put into evidence.

16 ALJ STERN: S-53a?

17 MR. MILLECAM: Yes.

18 MR. SCHULMAN: Your Honor, I don't have any
19 objections to Mr. Schwank's cover letter of 53a, and I
20 don't have any objections to his own personal checks or
21 the checks of the entities related to him that he wrote.
22 But I do have objections for lack of foundation and
23 hearsay with respect to the balance of Exhibit 53a.

24 ALJ STERN: Okay. Wait a minute. I'll overrule
25 your objection pretty much for the same reason that I

1 have previously. I think Mr. Schwank is here testifying
2 under oath that he did in fact receive these documents
3 and that they're collected and then apparently shipped
4 off to a Division investigator on October 28, 2010. So
5 Exhibit S-53a is admitted.

6 MR. MILLECAM: Thank you.

7 (Exhibit S-53a was admitted into evidence.)

8 ALJ STERN: Go ahead.

9 MR. MILLECAM: Thank you, Your Honor.

10 BY MR. MILLECAM:

11 Q. Mr. Schwank, as you gathered documents and
12 information from these people that you've identified as
13 Parker Skylar investors, did any of these persons provide
14 you with any accounting or financial information for
15 Parker Skylar?

16 A. No. To my knowledge, they didn't have any.

17 Q. Did anyone provide you with any Parker Skylar
18 financial statements?

19 A. No.

20 Q. Did you request all Parker Skylar documents from
21 them that they might have in their possession?

22 A. Yes.

23 Q. Did any of them provide you with any Parker
24 Skylar bank statements?

25 A. No.

1 Q. Did any of them provide you with any
2 authorizations that would authorize these members to act
3 on Parker Skylar's behalf?

4 A. No.

5 Q. Did any of them provide you with a complete list
6 of members of Parker Skylar?

7 A. No.

8 Q. Did any of them provide you with member or
9 manager meeting minutes from Parker Skylar?

10 A. No.

11 Q. Let me switch gears a little bit here. While you
12 attempted to locate these Parker Skylar interest holders,
13 did you ever discover any Parker Skylar transactions with
14 Nascent Investments?

15 A. No.

16 ALJ STERN: With who Investments?

17 MR. MILLECAM: Nascent Investments.

18 BY MR. MILLECAM:

19 Q. Did you later find out about a Parker Skylar
20 transaction with Nascent Investments?

21 A. Yes.

22 Q. And can you describe briefly what that
23 transaction was?

24 A. Apparently, Nascent had loaned Parker Skylar
25 \$250,000 that supposedly went towards the purchase of

1 the property.

2 ALJ STERN: Do you know when?

3 THE WITNESS: I believe that was May of 2008.

4 ALJ STERN: Go ahead.

5 BY MR. MILLECAM:

6 Q. Are you aware if Nascent Investments currently
7 claims to have an interest in Parker Skylar?

8 A. Oh, yes.

9 Q. Has Nascent taken any legal action to enforce its
10 interest in Parker Skylar?

11 A. Nascent filed a lawsuit against Cochise County,
12 Parker Skylar, my wife and I, 1900 Investors, Alan and
13 Linda Thome, and possibly each and every other
14 individual investor in 1900, LLC.

15 Q. You have before you Exhibit S-50; is that
16 correct?

17 A. Yes.

18 ALJ STERN: Before we move on to a different
19 exhibit, what about S-53b, or are you going back to
20 that?

21 MR. MILLECAM: That will be later. That's why
22 we divided it. We will present that when
23 Ms. McDermitt-Field testifies.

24 ALJ STERN: Okay. Where are you at now? S-50?

25 MR. MILLECAM: Yes, S-50.

1 BY MR. MILLECAM:

2 Q. Do you recognize S-50 as a complaint you received
3 from Nascent Investments?

4 A. Yes, I do.

5 MR. MILLECAM: Your Honor, we're going to move
6 that S-50 be moved into evidence. It's certified copy
7 of the Nascent Investments complaint against Pat Shudak
8 and several other parties, including Mr. Schwank and his
9 wife.

10 MR. SCHULMAN: No objections, Your Honor.

11 ALJ STERN: Okay. Exhibit S-50 is admitted
12 without objection. Thank you.

13 (Exhibit S-50 was admitted into evidence.)

14 BY MR. MILLECAM:

15 Q. I believe you already answered that, but this is
16 your testimony that you did not find out about Nascent
17 Investment until after you invested; is that correct?

18 A. Yes.

19 Q. Can you give a time line for when that was, when
20 you found out about Nascent Investment's loan to Parker
21 Skylar?

22 A. Well, it was allegedly found out when my wife
23 and I received a phone call from Eric Falbe who is the
24 principal of Nascent Investments. We were headed out of
25 town. Put the phone on speaker phone in the car. This

1 guy I had never met before starts talking to us about
2 his interest in Parker Skylar.

3 ALJ STERN: You said Eric?

4 THE WITNESS: Falbe.

5 ALJ STERN: Spell it.

6 THE WITNESS: F-A-L-B-E.

7 ALJ STERN: That's maybe the lawyer or the law
8 firm that filed this suit?

9 THE WITNESS: Yeah.

10 ALJ STERN: So he invested \$250,000 in Parker
11 Skylar?

12 THE WITNESS: Well, apparently he put \$250,000
13 towards the original land purchase that none of us knew
14 anything about. So Falbe had called my wife and I out
15 of the blue -- this was, I think, February of 2010 --
16 and starts talking about him having interest in Parker
17 Skylar, that he lent money, but he was extremely vague
18 about any terms, any payback, any anything, and this was
19 also right at the crux of that time frame where we had
20 spent, were in the middle of and spending time trying to
21 vet anybody we possibly could have.

22 ALJ STERN: This is in 2008 or 2009?

23 THE WITNESS: I got the phone call in 2010,
24 February 2010 from Falbe.

25 BY MR. MILLECAM:

1 Q. What is Mr. Falbe's relationship to Nascent
2 Investment, just to clear that up?

3 A. As far as I know, he is Nascent Investments.

4 Q. Let's go ahead and again switch gears a little
5 bit. We're going to talk kind of about the present state
6 of Parker Skylar after all the investments and things
7 happened after you sorted this together.

8 Can you briefly describe Mr. Shudak's current
9 role in Parker Skylar?

10 A. None.

11 Q. And why is his role none?

12 A. We requested his resignation in, I believe
13 December of 2009, and received it. Tim Olp actually
14 received it.

15 Q. Why did you request his resignation?

16 A. Because we believed that he had taken
17 approximately \$800,000 to \$1,000,000 of monies that did
18 not get to Cochise County.

19 Q. You removed him as a manager. Did you also
20 remove Parker Skylar as a member of Cochise County 1900?

21 A. I believe the paperwork was fairly simple.
22 Basically just says he was removing himself from any and
23 all interest as the manager of Parker Skylar and any and
24 all interest in Parker Skylar.

25 Q. What did you replace Parker Skylar with as a

1 member?

2 A. 1900 Investors.

3 Q. Who are the members of 1900 Investors?

4 A. Can I explain the process just a little bit?

5 Q. Yes, if you could.

6 A. Basically at that point of finding out that
7 there was a problem, we, Tim Olp and myself
8 specifically -- other people were involved, too, John
9 Schnaible to some extent. We went out looking for
10 anybody that we could find that may have been in this.
11 Olp was trying to get all the paperwork.

12 ALJ STERN: Tim Olp?

13 THE WITNESS: Yes.

14 ALJ STERN: O-L-P, that's another investor?

15 THE WITNESS: O-L-P, yes. We were trying to get
16 all this paperwork from Shudak. We were hoping that
17 even though the problems that -- there was monies due.
18 Alan Thome was in the middle of doing this. There were
19 bills to be paid. There was stuff that had to be done
20 to keep going towards entitlement, and, all of a sudden,
21 the monies weren't there that were supposed to have been
22 there.

23 So we contacted, attempted to contact everybody
24 we possibly could, find out what their position was, get
25 their paperwork; and then there was a series of

1 teleconferences, different meetings of that sort to try
2 to get everybody and figure out if we could do anything,
3 and if we wanted to do anything, and what would be
4 needed to move forward.

5 BY MR. MILLECAM:

6 Q. Are the members of 1900 Investors, did they
7 include all of the members of Parker Skylar?

8 A. No.

9 Q. So you excluded a few Parker Skylar members from
10 1900 Investors?

11 A. And the point of -- yes.

12 Q. What was the basis of excluding them, can you
13 describe that?

14 A. Again, we had to go through each and every piece
15 of paper. We went through getting documentation of
16 their investments. We looked through all the pieces of
17 paper to try and see if somebody, if everything was
18 copacetic. There was paperwork, as an example. Frank
19 Lamer was one of the first to invest. He was a high
20 school buddy of Shudak's. He put in \$128,000, and he
21 got 10 units, but let's just call them percents because
22 that's what they were.

23 The next to invest was Craig Swandal. Craig put
24 in \$300,000, and Craig got 9 units. He paid \$33,000 a
25 unit.

1 ALJ STERN: How much did you pay a unit?

2 THE WITNESS: I paid \$18,000 a unit, and I was
3 in next in July.

4 So here we have all this paperwork. As I
5 accumulate it all, I made lists of this thing, and it's
6 now, I figured out it's even more. The sum of it all
7 was 131 percent of Parker Skylar had been sold, which
8 quite obviously wouldn't have left anything for Shudak,
9 plus the fact that it's worse than that because now that
10 Falbe apparently had paperwork that says he was supposed
11 to get 20 percent, and actually Van Hook -- and that
12 Falbe was right at during that loan period, beginning of
13 it, so that drives it up to 151. And Van Hook who came
14 in last in like July of '09, I believe, he had made a
15 personal loan for \$200,000, but in looking at the
16 paperwork, that also had a security interest of 50
17 percent in Parker Skylar.

18 So we're now up to 200 percent of Parker Skylar
19 was gone. People that were excluded, to get back to
20 your question, as an example, Paul McCardle, who was
21 also a high school friend of Pat Shudak's, had I want to
22 say 19 percent total. He was given six here for -- what
23 are the terms? Basically good and valuable
24 consideration. He was given other monies at times. And
25 basically, in looking at all of it, he had loaned Shudak

1 some money in late '07 and '08. But in getting the
2 paperwork, Paul McCardle sent me his paperwork that
3 documented that he had been paid back for loans that he
4 made to Shudak. So that was excluded. And basically,
5 Paul McCardle had no dollars in this thing at all. So
6 he was excluded.

7 Frank Lamer was included to the extent that he
8 actually had \$128,000 in, but Frank Lamer had a total
9 through good and valuable conversation and other things
10 of 22 1/2 percent. So Frank agreed and came on board
11 and had his percentage.

12 Then, again, in the Van Hook case, he came to us
13 late because Alan Thome actually told me that this guy
14 had made a loan to Shudak. We didn't know anything
15 about him.

16 MR. SCHULMAN: Objection, Your Honor. That's
17 hearsay, double hearsay.

18 THE WITNESS: I've got paperwork.

19 ALJ STERN: Well, sustain -- do you have any
20 comment?

21 MR. MILLECAM: My only comment is that while he
22 is describing these numbers on his understanding, the
23 Division will provide numbers based on the documents
24 that have been admitted into evidence, and we'll have a
25 further exhibit establishing these numbers.

1 ALJ STERN: I'm going to sustain his objection
2 as to the fact that --

3 BY MR. MILLECAM:

4 Q. Let me go back to, I think, the question where
5 I'm getting at. I maybe have not been as clear as I could
6 have been.

7 It sounds like, from your description, the people
8 that were excluded from 1900 Investors were those who did
9 not contribute cash to Parker Skylar?

10 A. Correct.

11 Q. And those individuals included John McCardle, I
12 believe you mentioned Jim Peterson, to some extent, Frank
13 Lamer, and were there any others that were excluded?

14 A. John Schnaible.

15 Q. John Schnaible. You did have to go through
16 somewhat of a process to figure out who owned what?

17 A. Somewhat of a process is putting it very mildly.

18 Q. What's the current status of this 1900 acre
19 development?

20 A. It's to be foreclosed on at any moment. There
21 was a lump sum payment of approximately \$970,000 that
22 was due at the end of May that we were --

23 Q. I'm sorry, I didn't hear that. Was that 170,000?

24 A. No, \$970,000 that was due at the end of May that
25 we were unable to make. So the property is now -- it's

1 up for sale, since once we get the foreclosure notice we
2 still have 90 days.

3 Q. When did you pull the property up for sale?

4 A. Approximately three months ago, four months ago,
5 originally at like 2.5.

6 Q. Originally 2.5. Has that since been lowered?

7 A. Yeah, it's at 1699 now.

8 ALJ STERN: \$1,699,000?

9 THE WITNESS: Yeah.

10 ALJ STERN: You're trying to sell it for that
11 now, your group, 1900 Investors?

12 THE WITNESS: Yeah, yeah.

13 BY MR. MILLECAM:

14 Q. And the \$970,000 payment, is that a balloon
15 payment for the deed of trust?

16 A. That was a balloon payment.

17 ALJ STERN: Who is it due to?

18 THE WITNESS: Lee Esch.

19 ALJ STERN: Name sounds familiar.

20 THE WITNESS: Another attorney.

21 ALJ STERN: Sorry about that.

22 THE WITNESS: They're the only ones getting paid
23 here, Your Honor.

24 ALJ STERN: He owns this property down in
25 Cochise County?

1 THE WITNESS: Him and wife and he has some
2 cousins, I think. They've had it forever. Nice guy.

3 BY MR. MILLECAM:

4 Q. Let's clarify, Cochise County 1900 owns it. They
5 hold the deed of trust on the property?

6 A. Uh-huh.

7 ALJ STERN: Cochise County 1900?

8 MR. MILLECAM: For now, Cochise County 1900.

9 THE WITNESS: Briefly.

10 ALJ STERN: But Mr. Esch has the actual claim
11 under the default, right?

12 THE WITNESS: Yes.

13 ALJ STERN: That's my understanding.

14 THE WITNESS: Yes. I've talked to him, yeah.

15 ALJ STERN: The foreclosure action has been
16 filed, right?

17 THE WITNESS: I talked, actually talked to Lee
18 or talked to him a couple times in e-mail the other day
19 asking about that, and I don't know that it has. I
20 haven't received the paper yet. He said he was in the
21 process. He told me it would probably happen late last
22 week. I said, gee, if you want to hold off as long as
23 possible, that would be great. So I haven't seen it
24 yet, but that's where we're at with it. Lee doesn't, he
25 doesn't want the property back. He would just as soon

1 that we got it sold and he got paid off. He doesn't
2 want to deal with it. But that would, if we
3 miraculously sold this at, say, 1.6, our money to
4 investors in this thing would get approximately ten to
5 twelve cents on the dollar.

6 MR. MILLECAM: Your Honor, can you give me a few
7 minutes to review my notes to see if I have any further
8 questions for this witness?

9 ALJ STERN: Right.

10 (A brief pause.)

11 MR. MILLECAM: I do have just a few additional
12 questions.

13 BY MR. MILLECAM:

14 Q. While we're still talking about 1900 Investors,
15 the current status of the project, did those investors,
16 have they put in further capital into the projects?

17 A. Oh, yeah, because the money wasn't there to get
18 the entitlement phase and to make these annual payments
19 that have been due. There have been annual payments of
20 \$190,000. Each investor put in roughly an additional 48
21 percent on top of their original investments. As an
22 example, I had 360. I have just over a half million
23 dollars lost in this thing.

24 Q. Then I'm going to backpedal here a little bit to
25 the question I had earlier on when you were describing how

1 you learned about the investment. You talked about being
2 driven around by Shudak. Was anyone with him when you
3 were driving around?

4 A. Jill Noetzelman and my wife.

5 Q. Who is Jill Noetzelman?

6 A. His girl friend. She was. I have no idea now.

7 MR. MILLECAM: No further questions.

8 ALJ STERN: No further questions.

9 So you were invested in an amount about,
10 originally if I understand you correctly, between -- I
11 know there's your daughters, two daughters' trust and
12 then you and your wife, and then I think maybe you
13 bought another couple units or something?

14 THE WITNESS: Yeah.

15 ALJ STERN: So from 360, you're up to about --

16 THE WITNESS: 504,789, I think. And I was the
17 single largest. The next largest was \$10,000 behind me,
18 and he's no longer around.

19 MR. MILLECAM: Is that Mick Manley that you're
20 talking about?

21 THE WITNESS: Mick Manley, yeah. He committed
22 suicide.

23 ALJ STERN: Okay. You're done with him on
24 direct?

25 MR. MILLECAM: Yes.

1 ALJ STERN: Okay. Mr. Schulman, I'm sure you
2 have a few questions for the witness, right?

3 MR. SCHULMAN: Yes.

4 ALJ STERN: Why don't we -- about how long do
5 you think you're going to run? I'm thinking of taking a
6 break and coming back for a while, or depends how long
7 you think your cross is going to be.

8 MR. SCHULMAN: I would anticipate going
9 approximately as long as the Division did.

10 ALJ STERN: Okay. I think we'll just take a
11 break then. Let's come back about a quarter after 1:00.
12 How is that?

13 MR. SCHULMAN: Up to you, Your Honor.

14 ALJ STERN: We'll see you around a quarter after
15 1:00.

16 (Recessed for lunch from 11:40 a.m to 1:15 p.m.)

17 ALJ STERN: Okay. Returning to the record, you
18 said you're done with your direct, sir?

19 MR. MILLECAM: Yes, that's correct. We're done.

20 ALJ STERN: Okay. We're ready for cross.

21 MR. SCHULMAN: Thank you, Your Honor.

22

23 CROSS-EXAMINATION

24 BY MR. SCHULMAN:

25 Q. Good afternoon, Mr. Schwank.

1 A. Good afternoon.

2 Q. Tell me again when it was that you met
3 Mr. Shudak.

4 A. Sometime in early 2008, I believe.

5 Q. And what were the circumstances of how you met?

6 A. We were both outpatients at a hospital.

7 Q. What were you being treated for as an outpatient?

8 MR. MILLECAM: I'm going to object to relevance
9 on this.

10 ALJ STERN: Mr. Schulman?

11 MR. SCHULMAN: Well, I don't -- I would like to
12 know the circumstances of how he met my client.

13 ALJ STERN: We don't have to know what disease
14 he had. I mean --

15 MR. MILLECAM: This is personal information for
16 Mr. Schwank.

17 MR. SCHULMAN: Well, Your Honor, the reasons why
18 he was in outpatient goes to the credibility of the
19 witness, Your Honor.

20 ALJ STERN: Hmm.

21 MR. SCHULMAN: And the credibility of his
22 testimony.

23 ALJ STERN: Well, can you -- I can think of a
24 couple ways you can do it. Can you rephrase your
25 question as to how you approach this issue? Then I'll

1 see where you go.

2 BY MR. SCHULMAN:

3 Q. Mr. Schwank, were you being treated for any
4 physical ailment?

5 A. No.

6 Q. Were you being treated for any mental ailment?

7 A. No.

8 MR. SCHULMAN: Your Honor, I'm not sure exactly
9 what you want me to do to get past this.

10 ALJ STERN: Perhaps you can ask what facilities
11 they were at.

12 MR. SCHULMAN: Thank you, Your Honor.

13 BY MR. SCHULMAN:

14 Q. What facility were you at for the outpatient
15 treatment?

16 A. Banner Health.

17 ALJ STERN: Okay. Do you have any more ideas?

18 BY MR. SCHULMAN:

19 Q. How long were you being treated for?

20 A. Four to six weeks, maybe.

21 Q. I'm sorry?

22 A. Four to six weeks, I believe. I couldn't tell
23 you exactly.

24 Q. Was that the first time you had received any of
25 this type of treatment?

1 A. Yes.

2 Q. Have you received any of this type of treatment
3 since then?

4 A. Yes.

5 Q. When else have you received that treatment, this
6 type of treatment?

7 A. First half of 2009.

8 Q. Does the -- whatever you were in treatment for,
9 does it impair any of your memory?

10 A. No.

11 Q. Does it impair any of your abilities?

12 A. No.

13 MR. SCHULMAN: Your Honor, I'm not looking to
14 embarrass the witness, but I have a right to ask him
15 questions about his memory about certain things, and I
16 believe that why he was seeking treatment has a
17 potential impact on his memory and faculties over the
18 relevant time period.

19 ALJ STERN: Mr. Millecam?

20 MR. MILLECAM: I propose that he ask something
21 about those specific things and see how well he
22 remembers them. I don't see where his health, personal
23 information of when he was in a hospital -- he just said
24 that he was capable of remembering things and data.

25 ALJ STERN: Well, I don't know. Mr. Schulman

1 has posed an issue here with respect to the credibility
2 of his memory possibly, if I understand Mr. Schulman
3 correctly. Is that correct?

4 MR. SCHULMAN: That's correct, Your Honor.

5 ALJ STERN: So if there is something that would
6 cause any kind of an impairment or there is an issue of
7 some sort of a memory problem, it might be relevant in
8 this area because you're asking questions going back
9 four years now. This is 2013, and you're talking about
10 actually 2008 and 2009. So it's five, four or five
11 years ago. And a lot of people don't remember what
12 happened last week, let alone what happened four or five
13 years ago.

14 So under the circumstances, I guess at this
15 point I'll overrule your objection, if he has something
16 he wants us to get to. Go ahead.

17 MR. SCHULMAN: Thank you, Your Honor.

18 BY MR. SCHULMAN:

19 Q. What were you being treated for when you met
20 Mr. Shudak?

21 A. Alcohol abuse.

22 Q. You again were in treatment in the first half of
23 2009?

24 A. Yes.

25 Q. How did you get to know Mr. Shudak during your

1 time as an outpatient?

2 A. Mr. Shudak was in Banner Health outpatient for
3 either Quaaludes or Ecstasy, sales and use.

4 Q. That wasn't my question. My question was, how
5 did you get to know Mr. Shudak while you were in
6 treatment?

7 A. Because he was in the same treatment group.

8 Q. Did you have any conversations with him?

9 A. Yes.

10 Q. What did you talk about?

11 A. A variety of things.

12 Q. How did you learn about the investment
13 opportunity with Cochise County 1900?

14 A. After we were out and had become friendly at the
15 group, like I said previously, we had become friendly.
16 My wife and his girl friend, all of us were friendly,
17 and just had general discussions about people, what they
18 do, their businesses and their jobs; and at some point
19 along the line he brought up what he did and the
20 investment opportunity.

21 Q. And then you told him that you were interested in
22 that investment opportunity?

23 A. Yeah, we went down eventually and toured the
24 property with him and Jill.

25 Q. He did not solicit you to make the investment,

1 correct?

2 A. I couldn't say that he didn't solicit me. We
3 were there. We were talking about other investors. I'm
4 sure it came up that there was room still in the
5 investment. In fact, I know that it did at times. It
6 was like there was a time frame and there was only so
7 many going to be able to get into it and conversations
8 to that effect.

9 Q. I'm not sure I understood your testimony because
10 you used a double negative in response to my question.

11 It's true though -- it's true that he did not
12 solicit you to invest in this opportunity, correct?

13 A. No, that's not true.

14 Q. He solicited you. What did he say?

15 A. Well, you're talking again five years ago,
16 whether anybody is in treatment or not, as the Judge
17 mentioned, remembering exact conversations from five
18 years ago?

19 Q. Well, do you remember whether he solicited you or
20 not?

21 A. I already told you that he did.

22 Q. Okay. Then what did he say?

23 A. I don't remember the exact verbiage of what it
24 was. I remember conversations we had relative to the
25 investment and him stating that there was only a limited

1 amount of people and units available in that investment
2 and that if we wanted to do it, we would have to do it
3 sooner rather than later.

4 Q. Isn't it true that you told him you were
5 interested in learning more information about this
6 investment opportunity?

7 A. Yes.

8 Q. You understood that the money was being raised to
9 finance the entitlements on a Parcel B?

10 A. No, to finance the purchase of the property and
11 the entitlements on Section B and any improvements
12 needed.

13 Q. Didn't --

14 ALJ STERN: Section B like boy?

15 THE WITNESS: There's three sections to this
16 property, and the middle section was the one that was
17 going to be supposedly gotten the entitlement and put
18 into housing to begin the project.

19 BY MR. SCHULMAN:

20 Q. I'm sorry, didn't you testify earlier that you
21 knew that Cochise County 1900 had already purchased the
22 property?

23 A. That was my understanding.

24 Q. So if you knew that Cochise County 1900 had
25 already purchased the property, why did you think that

1 some of your funds would be used for the purchase of the
2 property?

3 A. I'm assuming the total funds he was raising were
4 taking care of both purchasing the property and going to
5 entitlement, and I had to assume at that point that he
6 had gotten the monies to buy the, purchase the property
7 already.

8 Q. Your profession now is as a day trader?

9 A. No. I didn't say that.

10 Q. What is your profession?

11 A. I told you I'm basically semiretired and
12 basically manage my stock investments from 1998 on.

13 Q. What do your investments consist of?

14 A. Stock.

15 Q. What do you do before you make your investments?

16 A. Research.

17 Q. What kind of research do you do?

18 A. Looking up whatever I can on-line and in any
19 available sources to find out as much as I can about the
20 company and the product.

21 Q. Do you do due diligence before you make your
22 investments in your stocks?

23 A. Due diligence specifically meaning what
24 regarding stocks?

25 Q. That you find out as much as you can about every

1 one of the stocks you invest in?

2 A. I believe I already said that, yes.

3 Q. What due diligence did you do before you invested
4 in Parker Skylar?

5 A. We had the operating agreements. My wife and I
6 went over it in depth on our trip to San Diego, looked
7 over every word and checked it out, and looked at that.
8 We took a trip down there with Shudak and his girl
9 friend to look at the property and check out the land
10 and the situation.

11 Q. I want to make sure I understand that. So you
12 looked at the offering materials?

13 A. Yes.

14 Q. Have we seen -- what offering materials did you
15 look at?

16 A. I think I just told you I looked at the
17 operating agreement.

18 Q. The LLC agreement?

19 A. Cochise County 1900 operating agreement and the
20 Parker Skylar operating agreement.

21 Q. Did those operating agreements talk at all about
22 the property or the development of the property?

23 A. Yes. We already read a phrase from it talking
24 about the entitlements and where the monies were
25 supposed to go.

1 Q. And you understood that Mr. Thome was going to
2 be, was the real estate guy responsible for the
3 entitlements?

4 A. Yeah. Alan Thome was supposed to be the
5 development arm of it as well as being the manager of
6 Cochise County 1900.

7 Q. And you didn't meet with Mr. Thome before you
8 made your investment?

9 A. I met with Mr. Thome one time at his office out
10 in Mesa, yes.

11 Q. Before you invested?

12 A. Yes.

13 Q. What questions did you have for Mr. Thome?

14 A. From five years ago or so you want me to
15 remember the exact questions that I asked of Mr. Thome?
16 I could go home and dig through all my notes and e-mails
17 and the rest of those and come back and give you a
18 really good answer; but to remember five years ago for
19 anybody exactly what I asked him, I couldn't tell you
20 that.

21 I asked him about the development, what the plan
22 was as far as how many houses, what we were going to do,
23 what they projected out about what the situation was in
24 Sierra Vista, about the base, about the Border Patrol,
25 anything around there, anything to do with Cochise

1 County.

2 Q. And these questions were directed to Mr. Thome?

3 A. Well, Pat was there with him. It was a general
4 meeting of the two people that were the partners in the
5 master project.

6 Q. Mr. Thome was answering your questions?

7 A. I believe Mr. Thome answered probably most of
8 them, yeah.

9 Q. And at that point, did you at least then learn
10 that the property had already been purchased?

11 A. I don't know that that was even discussed.
12 There was the assumption that I guess the property was
13 purchased or they had control of it in one form or
14 another.

15 Q. I'm just trying to figure out what you understood
16 at the most basic level, what you thought you were
17 investing in. Did you understand that you --

18 A. Well, I think I've explained what I was
19 investing in, which was 1,912 acres of property that was
20 allegedly owned, part of which, Section B, which is 720
21 acres, was going to be developed into housing units,
22 somewhere around 300 or so housing units, and then
23 possibly down the road the other sections, A and C,
24 might or may not be developed if the thing wasn't
25 purchased ahead of time by a larger developer.

1 Q. And you understood that your money was going to
2 be used to pay for the entitlements for Parcel B?

3 A. Yes.

4 ALJ STERN: What exactly are the entitlements
5 that you're talking about?

6 THE WITNESS: When you go to plat, to get a
7 tentative plat, then you've got to go and get
8 hydrologists' reports and engineer reports and do a
9 bunch of other pre-work. Again, I'm not the developer,
10 but there were bills and there were people working on it
11 constantly, and Alan Thome had been working on it before
12 up to the point that I got into it is my understanding.

13 ALJ STERN: Parcel B was this 1900 acres?

14 THE WITNESS: No, Parcel B was 720 acres. It
15 was just one section plus of the entire 1912 acres.

16 ALJ STERN: So the 640 acres plus another 80 --

17 THE WITNESS: Basically, yeah.

18 BY MR. SCHULMAN:

19 Q. In terms of a sequence, you didn't decide to
20 invest until after you met with Mr. Thome and he answered
21 your questions for you?

22 A. That's correct.

23 Q. What information did you learn in your meetings
24 with Mr. Thome and with Mr. Shudak that you relied upon
25 for your investment?

1 A. For the most part, it would have been that there
2 was projected growth of the base, projected growth of
3 the Border Patrol, which has since happened; that in
4 touring Sierra Vista and talking to them and looking at
5 some things and touring with Patrick Shudak looking at
6 what builders and what growth was going on in housing
7 down there. There were other numbers and figures that
8 they had relative to housing starts and things down
9 there in Cochise County, that type of information.

10 Q. As you sit here today, do you have any
11 information or evidence that those representations that
12 were made to you at the time were false?

13 A. The particular ones that I mentioned, I'm not
14 sure the base, but the Border Patrol grew and it was
15 expanded.

16 Q. So according to your records, you made two
17 initial investments on July 28 of 2008; is that correct?

18 A. Correct.

19 Q. How -- in relation to your meeting with
20 Mr. Thome, how much earlier had you met with Mr. Thome
21 before you made your investment on July 28?

22 A. Gosh, I don't remember specifically how far
23 before that time it was.

24 Q. Was it weeks or months or days, do you recall?

25 A. Oh, I would say it was -- I mean if I were to

1 guess, I would guess it was probably a month or months.

2 Q. Why did you wait a month or months before
3 investing after meeting --

4 A. I just said I'm not positive it was a month or
5 months. But the other thing would be getting my funds
6 together was the biggest thing because I was taking a
7 mortgage out on a property that I didn't have a mortgage
8 on before, and that took time.

9 Q. Then the third investment was made on November
10 14, 2008, correct?

11 A. Correct.

12 Q. Why was there this four-month lapse between your
13 first two investments and your third investment?

14 A. Simply because I decided to put some more of my
15 own money into the project.

16 Q. Why did you decide to put more money into the
17 project?

18 A. I still thought it was okay at that point.

19 Q. Did you have any communications with Mr. Shudak
20 between July of 2008 and November 2008?

21 A. I told you before, we saw Shudak a lot because
22 for a lot of that year, we were all friends and/or
23 friendly. I mean at Thanksgiving, we were at Shudak's
24 for him doing a turkey, deep-frying a turkey. So it was
25 that type of a relationship up until the point that

1 everything went to --

2 Q. Went to what?

3 A. Hell. Bad. Gone. Money taken.

4 Q. When do you think that happened?

5 A. Well, obviously about the time that Alan called
6 me, which was in December, saying that monies weren't
7 coming in to Cochise County 1900.

8 Q. That was in December of 2009?

9 A. Yes.

10 ALJ STERN: 2009 or 2008? 2009? The telephone
11 call from Mr. Thome or whatever his name is.

12 THE WITNESS: That was 2009.

13 ALJ STERN: Okay.

14 BY MR. SCHULMAN:

15 Q. What happened in between your last investment in
16 November 2008 for the next year in December 2009 with
17 respect to the development, if you know?

18 A. With respect to the development? I'm not sure
19 what you're asking except for the fact that we got the
20 call from Alan Thome that monies weren't getting to the
21 project.

22 Q. My question to you is, do you know what work, if
23 any, was being done by Alan Thome and others on the
24 project?

25 A. I wouldn't be able -- I didn't monitor it on a

1 weekly basis or a monthly basis. I could go home and
2 sift through e-mails and try and see if there was
3 anything stating something, but there were not weekly or
4 monthly reports stating what was going on. We were just
5 investors.

6 Q. I appreciate your answer, but that didn't answer
7 my question. I just simply want to know if you knew what
8 was going on with the project after you made your
9 investment in 2008 through December 2009?

10 A. Yes, they were continuing to work towards
11 entitlements and getting the plat approved.

12 Q. How did you learn that information?

13 A. Shudak.

14 Q. Then you get a call in December 2009 from
15 Mr. Thome?

16 A. I've already told you that.

17 Q. Did he tell you why he was calling you?

18 A. Because I had met Thome -- I can't answer for
19 Alan Thome. As I've said, I met Thome before we made
20 the investment. So he knew who I was. So I could only
21 assume he would call me because he could get ahold of me
22 and knew that I was one of the investors.

23 Q. By the way, during this year between your
24 investment and you received the call from Mr. Thome, you
25 solicited two of your friends, Craig Thomson and Jack

1 Sandner to invest?

2 A. I made them aware of an investment opportunity
3 that I thought was okay. So yes.

4 Q. Can you take a look at Exhibit S-30 which had
5 been previously provided to you. You testified that you
6 read all of these documents before you signed them,
7 correct?

8 A. Yes.

9 Q. Can you please go towards the back end of these
10 documents and look at Bates No. ACC 4474, which is
11 Additional Terms and Conditions? You see that?

12 A. Yeah.

13 Q. You understand that these additional terms and
14 conditions were attached to each one of the three
15 investments that you made?

16 A. I would have to -- I'm assuming so, yeah.

17 Q. And you understand that you were making certain
18 representations and warranties to the company?

19 A. Okay.

20 Q. And by executing these investment documents, you
21 are representing and warranting to the company that you
22 relied solely on the information contained and referred to
23 therein, correct?

24 A. What are you trying to ask me? I'm not sure I
25 understand the question completely.

1 Q. In Paragraph 1(a) you are representing and
2 warranting to the company that you relied solely on the
3 information contained and referred to therein, which is
4 the investment document, correct?

5 A. That's what it says, yes.

6 Q. And that's a representation and warranty that
7 you're making to the company, correct?

8 A. That's what you're telling me, yes.

9 Q. Sir, are you having trouble understanding my
10 question?

11 A. No, I'm confirming I signed this, so -- I'm not
12 sure what else you want here.

13 Q. Well, that's a representation and warranty that
14 you're giving to the company, correct?

15 A. Apparently.

16 Q. Well, are you not -- are you not sure?

17 A. Well, it says that here and I signed it, right?

18 Q. And you read it?

19 A. Of course.

20 Q. Okay. And then you go on to represent and
21 warrant to the company that you understood that all
22 documents pertaining to the investment had been made
23 available by the company for inspection by you or your
24 attorney, accountant, and other advisors, correct?

25 A. Yes.

1 Q. And you also represent and warrant that you were
2 familiar with the company's business objectives and the
3 financial arrangements in connection therewith, and that
4 you believed the units that you were purchasing are the
5 kind of securities that you wish to hold for investment,
6 and that the nature and amount of the units are consistent
7 with your investment program, correct?

8 A. That's what it says, yes.

9 Q. And you also are representing and warranting that
10 you had a reasonable opportunity to ask questions of and
11 receive answers from representatives of the company
12 concerning the company, its business, and the units,
13 correct?

14 A. Yes.

15 Q. And you're also representing and warranting that
16 all such questions have been answered to my full
17 satisfaction, correct?

18 A. At that time, yes.

19 Q. You also are representing and warranting that you
20 or your advisors made such investigation of the facts and
21 circumstances set forth in the disclosure in connection
22 with the purchase of the units that you deemed necessary,
23 correct?

24 A. Yes.

25 Q. And you also represent and warrant that no

1 representations were made or information furnished to you
2 or your advisors relating to the company, its business, or
3 the units which were in any way inconsistent with the
4 disclosure, correct?

5 A. That's what I signed in the paperwork, yes.

6 Q. And in Paragraph C, you're representing and
7 warranting that you've carefully reviewed all the
8 disclosure furnished to you by the company, correct?

9 A. Yes.

10 Q. And that you have, either alone or together with
11 your advisors, such knowledge and experience in business
12 and financial matters as will enable you to evaluate the
13 merits and risks of the prospective investment and to make
14 an informed investment decision, correct?

15 A. Yes.

16 Q. In Paragraph D you are representing and
17 warranting to the company that you understood that the
18 investment was speculative and uncertain, correct?

19 A. Yes.

20 Q. What did Mr. Thome tell you when he called you in
21 December 2009 saying that money was not getting to the
22 project?

23 A. I think that best sums it up. I can't remember
24 the entire conversation from four years ago practically.
25 But the biggest gist of it was that he was calling a

1 meeting, that there was a problem with Shudak and the
2 monies getting into the project. He wanted to meet with
3 the people that he knew that were in the Valley to
4 discuss exactly what was going on.

5 Q. Then a meeting took place?

6 A. Yes.

7 Q. Who attended the meeting?

8 A. To repeat what I've told you before, to my
9 knowledge, Tim Olp was there; I believe Gary
10 Gruetzemacher was there; I believe Walt Thome, Alan's
11 brother, was there, but I can't swear to that. There
12 was another gentleman that worked for some security
13 company that I have no idea who he was. Those are the
14 only parties that I remember specifically at that
15 meeting.

16 Q. Do you know that there were others at the
17 meeting; you just can't recall who they were?

18 A. I think there may have been another body or two.
19 I don't recall. It seems like there was about six
20 people there.

21 Q. What did Mr. Thome say at this meeting?

22 A. Basically what I've just told you, that again,
23 he wasn't getting the monies from Shudak to pay the
24 bills that he had to pay to the engineers, hydrologists,
25 everybody else he had, to continue on because he had

1 been working on it, and that, you know, he wasn't
2 getting contact from Shudak, he wasn't getting money
3 from Shudak, and we had a problem.

4 Q. Did Mr. Thome indicate how much money he was
5 short?

6 A. I don't remember at this stage exactly what the
7 numbers were. We still had -- I mean all I can assume
8 is we still needed to come up with \$200,000 to get to
9 tentative plat, because that was the biggest number that
10 we were going to have to have. That isn't the amount
11 that was owed at that particular occasion, but that was
12 the monies that were needed just to get to tentative
13 plat, approximate amount.

14 Q. How did you come to that understanding?

15 A. That's what he had told us.

16 Q. Did he provide you with any documentation
17 evidencing that monies weren't going to Cochise County
18 1900 at that time?

19 A. Not at that time.

20 Q. So you were just going on his word?

21 A. Yeah.

22 ALJ STERN: That's on Mr. Thome's word, right?

23 THE WITNESS: Yeah.

24 BY MR. SCHULMAN:

25 Q. So this meeting and this conversation with

1 Mr. Thome takes place in December 2009, correct?

2 A. Yes.

3 Q. And then later in 2009, as you testified earlier,
4 there was a request made that Mr. Shudak basically
5 relinquish his interest in Parker Skylar, correct?

6 A. Correct.

7 MR. SCHULMAN: Your Honor, I would like to
8 approach the witness --

9 ALJ STERN: Go ahead.

10 MR. SCHULMAN: -- and introduce Exhibit R-1.

11 ALJ STERN: Go ahead.

12 BY MR. SCHULMAN:

13 Q. Mr. Schwank, are you familiar with Exhibit R-1?

14 A. Yes.

15 Q. Exhibit R-1, the document that Mr. Shudak was
16 asked to sign to relinquish his interest in Parker Skylar?

17 A. Looks like it, yes.

18 Q. Do you know who drafted this document?

19 A. I don't know if we had our attorney, Richard
20 Chambliss, draft it. I believe so, but I couldn't swear
21 to that. I believe we asked him to draft a simple
22 document of resignation.

23 Q. Who is the "we"?

24 A. Tim Olp and I were mainly working together at
25 the time. There had been prior meetings with an

1 attorney with a couple of other individuals in this
2 group as we were starting to reform.

3 Q. I don't understand. When did you have these
4 prior meetings with another attorney?

5 A. As we found out about the problem and were
6 trying to figure out what to do, we have -- Craig
7 Thomson had a real estate attorney friend of his,
8 Richard Chambliss, who we made an appointment with and
9 met with to talk about the whole thing preliminarily.
10 We had other talks with him, too.

11 Q. Prior to December 2009?

12 A. I don't remember the exact date of that meeting.
13 I could find it out if I have to.

14 Q. Well, I'm just trying to understand the sequence
15 of events. You said that Mr. Thome calls you in December
16 2009 and tells you that money is not going to the
17 property?

18 A. Right.

19 Q. And then how soon after his phone call were you
20 able to get everyone together for a meeting?

21 A. Again, I would have to look at my records at
22 home. I can't tell you offhand.

23 Q. Can you give us your best guess?

24 A. No. I mean there was a series of meetings
25 between -- everything happened very quickly from the

1 time Alan Thome called and the time that we re-formed in
2 about a three-month period in there. So there were a
3 ton of different meetings of things. This was a result
4 of Tim Olp working with Shudak because they had a
5 rapport of sorts, to try and get the paperwork. Shudak
6 basically agreed with Tim Olp that he would sign a
7 resignation paper. If we would consider not proceeding
8 against him as we are right now. That's where this
9 paper came from.

10 MR. SCHULMAN: Move to strike as nonresponsive.

11 BY MR. SCHULMAN:

12 Q. Mr. Schwank, what I'm trying to understand is the
13 sequence of events here. So just bear with me. This
14 document, R-1, is dated December 15, 2009, correct?

15 A. I understand that.

16 Q. So you're saying that you had a meeting with
17 Mr. Thome or a phone call from Mr. Thome in December 2009,
18 a meeting with Mr. Thome in 2009 with other investors.
19 You had an opportunity to meet with at least one counsel,
20 one attorney to get investment advice, and all of this
21 happened within a span of two weeks before Mr. Shudak is
22 presented with this document, R-1?

23 A. Apparently.

24 Q. Well, do you know, or are you just guessing?

25 A. I've told you before, I have to go -- I can go

1 home and look at the sequence of e-mails and the rest of
2 it that went on. Okay? So --

3 Q. It's hard because it's been, you know, three or
4 four years since all this happened, correct?

5 A. Yeah.

6 Q. Memories tend to fade, correct?

7 A. I have information that I could look up when I
8 get home.

9 Q. Can you just answer my question?

10 A. Everybody's memories fade, yes.

11 Q. So it's your best memory that Mr. Chambliss, an
12 attorney, drafted this document, R-1?

13 A. That's my best memory.

14 Q. And did you present it to Mr. Shudak to sign?

15 A. No. Tim Olp did.

16 Q. You indicated that Mr. Olp had a rapport with
17 Mr. Shudak. Had you had a falling-out with Mr. Shudak by
18 this time?

19 A. We -- we knew everything was going belly-up. As
20 I said before, Olp had a rapport with him because Olp
21 was a preacher and a lot of what Pat Shudak did, does,
22 and has done was religious-related. So Olp was
23 approaching him from that standpoint and had known him
24 earlier than I had. Olp went back to, I believe, late
25 2007 with Shudak, had a longer history with him, and was

1 better able to influence trying to get the documents we
2 needed. That's why.

3 Q. My question to you, sir, was whether or not your
4 rapport with Mr. Shudak had changed prior to December
5 2009?

6 A. Of course it had.

7 Q. And that was because of what Mr. Thome told you?

8 A. It had been deteriorating for months because of
9 lack of communication. Okay? I can't tell you
10 specifically at what point the rest of it, but it had
11 gone on. Yeah, I made an investment in November of that
12 year, but it all blew up very quickly.

13 Q. What did you expect to happen after Mr. Shudak
14 resigned?

15 A. All we were hoping to do was find out all the
16 members and see if there was any chance of saving the
17 investment..

18 Q. And what does saving the investment mean to you?

19 A. Seeing whether we could save any -- well, there
20 were no monies there to be saved. Seeing if there was
21 any real possibility, if we believed there was any real
22 possibility of perhaps still moving forward and making
23 some money out of this or at least getting our money
24 back from it.

25 Q. When Mr. Shudak voluntarily resigned from Parker

1 Skylar, did you take a leadership role in the LLC?

2 A. Yes. To the extent that we had an executive
3 committee for a while -- I would have to go look at my
4 notes as to how long that went on -- that met so that we
5 didn't have to have 15, 17 people on the phone calls.
6 And then eventually it was just too cumbersome. I was
7 here, and I was basically voted in as the manager of the
8 new entity.

9 Q. The manager of the new entity, are you talking
10 about 1900 Investors?

11 A. Yes.

12 Q. We'll get to that in a second. So there was an
13 executive committee that was running Parker Skylar as of
14 December 2009?

15 A. It wasn't running Parker Skylar. It was a
16 committee of people that had monies in Parker Skylar
17 that we had vetted and were vetting to see what we
18 wanted to do. So basically it was comprised of, I
19 believe, five people or so that were the largest
20 investors.

21 Q. Who are those investors?

22 A. Myself, Craig Swandal, Mick Manley, those are
23 the three biggest. Those are the three main ones I can
24 remember, but I would have to refer to other notes to
25 see what the executive committee was made up of.

1 ALJ STERN: Who was the one who committed
2 suicide?

3 THE WITNESS: Mick Manley.

4 ALJ STERN: Was it related to this transaction?

5 THE WITNESS: We don't know. He was a 40
6 something healthy -- he was actually a power lifter --
7 guy in Nebraska that had a very affluent insurance
8 business supposedly; and then I actually found out from
9 Frank Lamer who was one of the guys in this who was a
10 high school buddy of his who e-mailed me. So I can't
11 speculate on --

12 ALJ STERN: Was that in 2009, '10?

13 THE WITNESS: That just happened early this
14 year.

15 ALJ STERN: Oh, I see.

16 BY MR. SCHULMAN:

17 Q. Isn't it true that the reason Mr. Shudak was
18 asked to resign his interest in Parker Skylar was because
19 you all were aware that he was having some financial
20 troubles on some of his unrelated businesses and you were
21 all concerned that Parker Skylar would get wrapped up into
22 a possible bankruptcy?

23 A. Not at all.

24 Q. You've never heard that before?

25 A. No.

1 Q. You testified that you heard from Mr. Falbe in
2 February 2010 about the Nascent loan; is that correct?

3 A. Yes.

4 Q. And on February 9, 2010, you create 1900
5 Investors; is that correct?

6 A. I would have to look at the dates to see when
7 that exactly happened, but that sounds about right.

8 Q. I have those documents if you need them.

9 A. I'm not disputing it.

10 Q. Did you hear from Mr. Falbe before you created
11 1900 Investors or after you heard from Mr. Falbe?

12 A. If it was on, you said February 9?

13 Q. Yes.

14 A. I don't remember the exact day in February I
15 heard from Falbe, but it was right around, somewhere
16 around that same time.

17 Q. Did you create 1900 Investors in response to what
18 you heard from Mr. Falbe?

19 A. Absolutely not. It had nothing to do with it.

20 Q. What was the point in creating 1900 Investors,
21 LLC?

22 A. Well, because as I pointed out before, Shudak
23 had sold, whatever you want to judge it, somewhere
24 between 130 and 200 percent of Parker Skylar. We had
25 agreements out there that were all over the board as far

1 as interest, as far as percents, units, whatever you
2 want to call them, that were far-reaching all over the
3 place that couldn't have been accommodated any way,
4 shape or form.

5 So the purpose was to try and get that large
6 group together and agree to parcel everything out on a
7 strict dollars-invested basis.

8 Q. Whose idea was that?

9 A. We talked about it in the executive committees
10 and groups.

11 Q. Why didn't you do all that reorganization within
12 Parker Skylar?

13 A. We never considered it particularly. I really
14 can't tell you why we did. We decided to reform because
15 of the problems. I guess, I'm only speculating that
16 some of the problems were with people that weren't
17 included because they didn't have dollar interests in
18 the thing and the wide variety of everything that was
19 there.

20 Q. What consideration did each of the investors put
21 into 1900 Investors, LLC?

22 A. Whatever dollars that they could give
23 documentation for that had gone to Parker Skylar.

24 Q. So no new consideration went into 1900 Investors,
25 LLC?

1 A. When it was formed?

2 Q. Yes.

3 A. No.

4 Q. And then 1900 Investors knocked out Parker Skylar
5 as a member of Cochise County 1900, correct?

6 A. Knocked out?

7 Q. Well, replaced Parker Skylar as a member of
8 Cochise County 1900, correct?

9 A. It reformed as 1900, and yes, it basically
10 replaced Parker Skylar since -- yeah.

11 Q. Whose idea was that?

12 A. Again, we discussed that in meetings. It wasn't
13 my sole idea. It was a decision and almost every
14 decision that we made, we had votes on, if needed, and
15 there's documentation of such.

16 Q. This was the executive committee group?

17 A. I'm assuming, yeah, the executive committee
18 group. Yeah, there were votes and discussions and, like
19 I said, meetings, teleconferences all the time.

20 Q. So do you all still hold membership interests in
21 Parker Skylar? Let me rephrase the question.

22 Do you still hold a membership interest in Parker
23 Skylar?

24 A. I don't know.

25 Q. Do you know whether or not any of the original

1 investors in Parker Skylar still hold membership interests
2 in Parker Skylar?

3 A. I'm not the lawyer. I don't know what the
4 paperwork means with the agreements that we have with
5 Parker Skylar from back when we signed them originally
6 and what we reformed as. So I can't answer that
7 question.

8 Q. And Parker Skylar's only asset really was its
9 interest in Cochise County 1900, correct?

10 A. As far as I know.

11 Q. Yes, and now Parker Skylar has no assets,
12 correct?

13 A. As far as I know.

14 Q. And that's because Parker Skylar was removed as a
15 member of Cochise County 1900, correct?

16 A. Yeah, he signed paperwork to remove himself.

17 Q. Mr. Shudak signed paperwork to resign all of his
18 interest in Parker Skylar, correct?

19 A. I'm not sure I understand what the point is.

20 Q. You don't need to. Just answer my questions,
21 please.

22 It's true that Parker Skylar no longer has any
23 assets, correct?

24 A. To my knowledge, no.

25 Q. And if there were any proceeds that came in from

1 the sale of the property, none of those proceeds would go
2 to Parker Skylar, correct?

3 A. No.

4 Q. No, you're agreeing with me?

5 A. Why would they go to Parker Skylar?

6 Q. They would go to 1900 Investors, correct?

7 A. To Poncho Holdings and 1900 Investors.

8 Q. And that's because you and the executive
9 committee removed Parker Skylar as a member of Cochise
10 County 1900?

11 A. We asked for the resignation, and they resigned
12 and removed himself, yes.

13 Q. Well, where in that document does it say that
14 Mr. Shudak is removing Parker Skylar as a member of
15 Cochise County 1900?

16 ALJ STERN: What's that again?

17 BY MR. SCHULMAN:

18 Q. Where on Exhibit R-1 does it say that Mr. Shudak
19 is removing Parker Skylar as a member of Cochise County
20 1900? It doesn't say that, does it?

21 A. It says, "Further, I relinquish and transfer to
22 the Company all interest I have as a member of the
23 Company for retention, distribution, or sale, as the
24 majority percentage interests in the Company may
25 determine."

1 Q. Right. So he's effectively giving all of his
2 interest in Parker Skylar back to the investors, right?

3 A. That is my understanding.

4 Q. And then the investors chose to replace Parker
5 Skylar as a member of Cochise County 1900?

6 A. Correct.

7 Q. After 1900 Investors was created, what work did
8 you do in connection with the property, if any?

9 A. I was the manager -- once we got to that point,
10 I was the manager of 1900 Investors, so I basically was
11 the contact point for information in and out for our
12 investment group, to do cash calls for the group, to
13 basically keep an eye on the project with Alan Thome as
14 to the ultimate goal of seeing if somehow we could make
15 the thing work.

16 Q. When you took over that role, were any of the
17 parcels for sale?

18 A. No.

19 Q. Why not?

20 A. Because we had decided to move forward and try
21 and get to plat and finish what the original intention
22 was.

23 Q. And that was a decision that was made independent
24 of anything Mr. Shudak ever said to you, correct?

25 A. Ask me again.

1 Q. Sure. You made that decision -- that decision
2 was made without any input or advice or representations
3 from Mr. Shudak, correct?

4 A. He was gone at this point, yeah.

5 Q. So my question to you is, when you take over the
6 management of 1900 Investors and you're working with
7 Mr. Thome at that point, why don't you just try to sell
8 the properties at that point to get your money back?

9 A. Well, apparently it was a bad judgment call.

10 Q. By you?

11 A. By us. Excuse me, I'm not the king of this
12 group. We made decisions. We voted on decisions. We
13 made them as a group as to what we wanted to do, and we
14 made a bad decision to try and continue on at that point
15 after we had lost, after so much money had disappeared.
16 Because we shouldn't have had to put \$200,000 more
17 towards tentative plat. That money wasn't there
18 anymore; and we shouldn't have had to make any more
19 payments on the property because that money wasn't there
20 anymore. But we did make the decision after Shudak was
21 gone to try and move on, yes.

22 Q. Well, first of all, these additional funds that
23 you put into the project, nobody was forcing you to do
24 that, correct?

25 A. No.

1 Q. Those were decisions that were made collectively
2 by the investors?

3 A. That's what I told you, yes.

4 Q. And if you had attempted to sell the property
5 back then, there's a possibility you could have gotten
6 your money back and would not have had to make any of
7 those additional investments, correct?

8 A. Do you know what the real estate market was
9 right then?

10 Q. Can you answer my question?

11 A. No. I don't think there was a possibility at
12 that point.

13 Q. Okay. And why is that?

14 A. Because the real estate market was horrible at
15 that moment in time, and so the chances of selling that
16 then may have been slim or none, and we decided we would
17 just try and work it out, get through it, and hope the
18 market was better by the time we got to plat.

19 Q. And do you think Mr. Shudak had any influence on
20 the real estate market?

21 A. None of us did, no.

22 Q. All right. In September 2010, you were part of a
23 petition requesting the establishment of the Topaz
24 Domestic Water District from the Board of Supervisors for
25 Cochise County; is that correct?

1 A. Yes.

2 Q. And you were going to be on the Board of
3 Directors for that?

4 A. Because I was the manager of 1900 Investors,
5 yes.

6 Q. And what was the Topaz Domestic Water District?

7 A. It was a water district formed for, that we
8 needed for the tentative plat and the project.

9 Q. And did that petition get approved?

10 A. Yes.

11 Q. And do you sit on the Board of Supervisors for
12 that water district?

13 A. Well, there's never been any meetings or
14 anything that's happened with it; but yes, technically
15 and legally, yeah.

16 Q. By the way, back, going back again, in February
17 2010, when you learned about the Nascent loan and you also
18 formed 1900 Investors, if you knew at this point about the
19 loan from Nascent, then what, if anything, did you do to
20 try to pay the loan back?

21 A. To Nascent?

22 Q. Yes.

23 A. This is going to take a while. We -- at that
24 point after the one phone call that I previously
25 discussed that we got from them and after having spent

1 the previous two months trying to vet people, finding
2 out that people like McCardle and Lamer didn't have real
3 interests, that other people didn't have real interests,
4 that Van Hook who had come in at the last minute had a
5 large interest that we hadn't even known about and we
6 included, and Falbe had called us on the phone, we had a
7 discussion that he was very vague about. I asked him
8 for paperwork, documentation just like we had with
9 everybody else going on there. I never heard from him
10 again. I never got any paperwork from him. I didn't
11 get squat from him.

12 ALJ STERN: From who was that?

13 THE WITNESS: Eric Falbe, Nascent Investments.

14 ALJ STERN: Okay.

15 THE WITNESS: Because at that point we just
16 included Van Hook late in the process because we found
17 out about his \$200,000. If we had documented people as
18 we had gone through everybody else to get here, thrown
19 in another quarter million dollars on top of the 2.1 we
20 already had and splitting it out and asking him if he
21 wanted to join, it would have been what we would have
22 done.

23 Since he was never heard from again, the
24 assumption, I guess, was made that there must not be
25 anything there; and until two months ago, there was no

1 word from Falbe relative to anything or him doing
2 anything to try and get his money back from Shudak or
3 Parker Skylar or any other entities. So to answer your
4 question, no.

5 ALJ STERN: Just a quick question. Again, I'm
6 trying to place Mr. Esch in all of this because I
7 remember this morning you were talking about a Mr. Esch.

8 THE WITNESS: Yes, the Esches, the lien holder
9 of the property note.

10 ALJ STERN: He's the lien holder of the note.
11 But what about -- and then Eric Falbe, what is his
12 situation with that note?

13 THE WITNESS: According to the paperwork on
14 Falbe's lawsuit, Esch was not allowing any liens against
15 the property at all. So Falbe, from how I understand
16 it, had an agreement with Parker Skylar and a 20 percent
17 interest in Parker Skylar if he defaulted, plus the
18 \$25,000 a month interest he was supposed to get every
19 month on the first of the month.

20 ALJ STERN: Esch?

21 THE WITNESS: No, Falbe.

22 ALJ STERN: Falbe.

23 THE WITNESS: Esch has nothing to do with this.
24 Falbe allegedly -- well, he had, I guess, put a quarter
25 million dollars into the original land purchase that we

1 didn't know about. Okay? And then Falbe's paperwork
2 says that he was supposed to have gotten \$25,000 a month
3 interest from Shudak/Parker Skylar. And that was like
4 six-month note, I believe. He was also then given a 20
5 percent interest in Parker Skylar, which we didn't know
6 anything about.

7 ALJ STERN: How long was he supposed to get that
8 \$25,000 a month?

9 THE WITNESS: Till it was paid back. It was a
10 six-month note. I believe it was a six-month note
11 originally, but it was \$25,000 on the first of the
12 month; and according to his paperwork and the lawsuit,
13 all he says he ever got paid back was \$50,000 from
14 Shudak a week or two before the whole note was due.

15 BY MR. SCHULMAN:

16 Q. During the time that you were involved in this
17 project, did you ever get appraisal of the property?

18 A. No. There was the original appraisal that was
19 done that Shudak showed us, and that was it.

20 Q. Why did you never get another appraisal?

21 A. Well, we weren't selling it at that time, so why
22 would we get another appraisal?

23 Q. Well, I'll ask the questions for this. Did you
24 at any point after 1900 Investors was formed consider
25 selling the property?

1 A. Not until quite recently.

2 Q. So you don't know how much money you could have
3 gotten for that property; is that correct?

4 A. No, we don't.

5 Q. When did you decide to put the property up for
6 sale?

7 A. I would have to look at the listing agreement,
8 but I believe it was January of this year, but I could
9 be off.

10 Q. Why did you decide, you as the group, 1900 --
11 well, strike that.

12 A. Wait a minute, hang on. It probably wasn't
13 January. I would have to go look back at the listing
14 agreement. It was several months before the lump sum
15 payment was coming due, we decided we would try and sell
16 the property. It may have been two or three months
17 before that lump sum payment was due at the end of May,
18 so it could have been February, March. I'm not sure.

19 Q. February, March 2009?

20 A. That's my best guess, but I would have to look
21 at the paperwork.

22 Q. No, February, March 2013, right?

23 A. Yeah.

24 Q. Sorry. And at no point before that, did you ever
25 even list the property for sell?

1 A. No.

2 Q. Did it ever occur to you, were there any
3 discussions about selling less than all of the parcels?

4 A. That's what we did when we listed it finally,
5 and we never had it listed -- there was always
6 discussions back for a long time, and there were
7 individuals working on their own without listing
8 agreements, like Jerry Gruetzemacher who lives down
9 actually on the property, and you know, I don't know if
10 Alan really was looking for other people -- I think he
11 was -- to buy other sections. Maybe one of the
12 sections, two of the sections, parts of it, so yeah that
13 was something we considered for the obvious reason, if
14 we sell part of it, we could pay off the lien holder and
15 still not have that burden. So yeah, but there was
16 nothing listed until recently.

17 Q. And why was the decision made now to list the
18 property?

19 A. Because the lump sum payment was coming due in
20 May. The indications from a lot of people were that it
21 may not be made, so we decided to list it.

22 Q. Have all the --

23 A. I'm sorry, it may have been also concurrently
24 with the tragedy to Mick Manley. Mick Manley was, like
25 I said, a large investor in this. Mick Manley seemed --

1 I don't know. I don't have his financials, but he
2 always acted like he had a lot of cash. He was always
3 the big one to hold onto the property and do all of
4 that. He seemed like someone that most of our group
5 thought would come up with extra monies if needed to at
6 the lump sum time. So at the point that Mick Manley had
7 the tragedy, all of a sudden, it was like whoa, that was
8 gone, and that influenced the decision to list the
9 property.

10 Q. In December 2009 when Mr. Thome told you that not
11 all the monies had reached Cochise County 1900 and you
12 believed him, why didn't you sue Mr. Shudak?

13 A. Why didn't we sue Mr. Shudak?

14 Q. Yes.

15 A. Because I guess we felt that that would just be
16 throwing more money away. It didn't appear at that
17 point that as -- well, wait a minute, you're asking me
18 as of December 2009, right at that point, why didn't we
19 sue him immediately?

20 Q. Or any time? Why have you never sued Mr. Shudak?

21 A. Monies to spend on lawyers and attorneys and
22 chasing him down, and the chance that there would be
23 nothing to get anyway because of the money that had
24 disappeared. We were busy spending our money on trying
25 to get to the plat and to move on and get something out

1 of the property rather than throwing money away and
2 trying to chase him down and then not being able to get
3 any cash out of him anyway. Nobody really believed we
4 would ever be able to get any cash from Shudak.

5 Q. What evidence do you have that money
6 "disappeared"?

7 A. Well, he raised over \$2 million, and from all
8 that we could ever see, it looks like only about a
9 million got into the project.

10 Q. What evidence do you have that supports the
11 contention that money disappeared?

12 A. Just whatever -- I'm not sure what Alan showed
13 us. And I can't -- again, I would have to look back at
14 my notes.

15 Q. So this is -- you're relying on information that
16 Mr. Thome provides to you?

17 A. The money was not in Cochise County account. I
18 had access to the Cochise County account to be able to
19 look at it, viewer access and the rest of it. And it
20 never got there. Okay? We came to the point where we
21 knew how much money was given, okay, to Parker Skylar
22 and/or Shudak, and the numbers didn't work. None of
23 that money when I looked on-line at Cochise County was
24 in the Cochise County account or had run through there,
25 so --

1 Q. But you don't know why those monies aren't in
2 that account, do you?

3 A. No. I could guess, but no.

4 ALJ STERN: How did you determine exactly how
5 much, you said was contributed. In other words, are you
6 going by the number of agreements and the amounts listed
7 in those agreements?

8 THE WITNESS: Yes.

9 ALJ STERN: So you reached a figure of over
10 \$2 million?

11 THE WITNESS: Yes.

12 ALJ STERN: And what is the basis of your
13 opinion as to how much money reached, would it be Parker
14 Skylar or -- not Parker Skylar. Cochise County
15 Investments, is that the one before your 1900 group?

16 THE WITNESS: Well, Cochise County again is the
17 parent company that owns the property and controls the
18 property. Okay? So, I mean we had \$2.1 million
19 documented of monies that all these people sent in to
20 it, and --

21 ALJ STERN: 2.1 to Parker Skylar, right?

22 THE WITNESS: Yes. And again, I had viewership
23 access to Cochise County and couldn't see where the
24 money ever got there. Again, I would have to go look
25 back at my records as to what it was, but we couldn't

1 see more than say \$900,000 that had gotten into there.

2 BY MR. SCHULMAN:

3 Q. It's possible that monies were paid towards the
4 project that did not go into Cochise County's bank
5 account, correct?

6 A. Anything is possible.

7 Q. Parker Skylar could have paid some of those
8 expenses directly, correct?

9 A. I guess so.

10 Q. Has Parcel B, have you all obtained all of the
11 entitlements for Parcel B now?

12 A. Parcel B has gotten to tentative plat, and in
13 Cochise County you don't go to final plat until you
14 actually have all the development monies and a developer
15 and somebody in place to actually do the whole thing.

16 Q. How much money was necessary to get the
17 entitlements up to this point for Parcel B?

18 A. Somewhere over \$200,000.

19 Q. I'm sorry?

20 A. Somewhere over \$200,000.

21 Q. That's total?

22 A. No, over and above any monies that had gone into
23 it up until the time of the 1900 formation.

24 Q. Do you know how much money total, in total has
25 been spent to bring the entitlements up to where it is

1 today with the property in Parcel B?

2 A. I couldn't tell you offhand.

3 Q. You testified that you're currently listing the
4 property for \$1.69 million; is that correct?

5 A. 16999. Parcel B is listed for 13999.

6 ALJ STERN: Wait a minute, which parcel is
7 listed for 1.699? Is that what you said?

8 THE WITNESS: All the property, all 1912 acres.
9 B is the one that has the tentative plat on it.

10 ALJ STERN: Excuse me?

11 THE WITNESS: Section B is the one that has the
12 tentative plat on it that was going to be developed, so
13 that one is listed separately.

14 ALJ STERN: That's 1.399?

15 THE WITNESS: 13999. And then all the property,
16 all three sections together are 16999.

17 ALJ STERN: So the A and C aren't really worth
18 very much. Parcel B is where the big money is?

19 THE WITNESS: Yeah, I mean if you develop the
20 whole plan, if you develop B, it automatically makes A
21 which is across the highway and C which is up on a hill
22 far more valuable.

23 BY MR. SCHULMAN:

24 Q. Sir, I'm handing you what we've marked as R-2. I
25 will represent to you that R-2 consists of screen shots

1 from a website with the address CopperHills.ME. Are you
2 familiar with these documents?

3 MR. MILLECAM: Objection. What is the
4 foundation? It sounds like Mr. Schulman is attempting
5 to lay his own foundation. Do we have a witness for
6 this exhibit?

7 MR. SCHULMAN: I'm about to ask him questions.
8 Considering that Mr. Schwank's name is on the first
9 page, I think that I am entitled to ask him some
10 questions about it.

11 ALJ STERN: I think that's adequate. I'll
12 overrule your objection. Go ahead.

13 BY MR. SCHULMAN:

14 Q. Are you familiar with these screen shots?

15 A. Obviously, yes.

16 Q. And what is this website?

17 A. What is this website?

18 Q. Yes.

19 A. It's CopperHills.ME website. It's website for
20 the property.

21 Q. Who created this website?

22 A. Our webmaster.

23 Q. When you're talking about "our," I don't know who
24 you're referring to. Is that Investors 1900 or --

25 A. Cochise County had a website up originally.

1 Alan Thome had formed the website. We changed it after
2 the management of Cochise County changed, and so it's
3 the Cochise County website. A guy named Brayden Morris,
4 I believe, is the webmaster.

5 Q. So in the box in the bottom left-hand corner
6 there are some references there, some different folks, and
7 you see that that's your name right there, right? Is that
8 your e-mail address?

9 A. Yeah.

10 Q. Who is Blaine Miller?

11 A. He's a consultant that we employed.

12 Q. What consulting work does he do?

13 A. Just to help. He had a real estate background
14 and development background, and basically a consultant
15 that I could ask questions of since I didn't have an
16 expertise in real estate.

17 Q. When did you hire Mr. Miller?

18 A. I don't have the exact date. It was at least a
19 year and a half ago or so.

20 Q. What is Modern Insights?

21 A. That's his business.

22 Q. How is Mr. Miller getting paid?

23 A. He would get one percent off of whatever we sold
24 the property for.

25 Q. Then on the box in the right-hand corner there is

1 a reference to Jacqueline Drake Realty?

2 A. Right.

3 Q. Who is that?

4 A. The realtors.

5 Q. Does Jacqueline Drake Realty have the listing for
6 the property?

7 A. Yeah.

8 Q. And this is that listing that you had in February
9 or March of this year?

10 A. Yes.

11 Q. How did you come to list it with Jacqueline Drake
12 Realty?

13 A. Blaine did a lot of the work in checking out
14 realtors and other people down in the Cochise County
15 area. Talked to a variety of different people. We had
16 one person in another area in southern Arizona that we
17 were interested in. We couldn't work out a deal. And
18 after talking to Jacqueline, meeting with Jacqueline, we
19 decided to use Jacqueline.

20 Q. If you'll turn to, oh, about six pages in, you'll
21 see a map of the three parcels?

22 A. Yeah.

23 Q. It says 1912 pristine acres now available for 2.5
24 million dollars; you see that?

25 A. Yeah.

1 Q. How did you arrive at the sale price without an
2 appraisal?

3 A. Looking at comps in the area that we could look
4 up and see and Blaine looked into, and we checked
5 around. There's a lot of property for sale down there,
6 and it becomes -- since there aren't a lot of recent
7 comps on things that had sold there, basically after you
8 do your research and you look up whatever you can almost
9 decide is a comp, then you're taking your best estimate
10 at what you might be able to sell the property for.

11 Q. So you are offering all three parcels for
12 \$2.5 million, but also each parcel could be purchased
13 separately?

14 A. We were.

15 Q. Have things changed since -- is this no longer
16 accurate information?

17 A. Correct. It's no longer accurate information.

18 Q. Because I just printed this off a couple days
19 ago. When did it change?

20 A. It changed about -- it changed within a week or
21 so ago, and the website just changed within days ago
22 when I got to the webmaster after we changed the price
23 with Jacqueline.

24 Q. So the price now for Parcel A is what?

25 A. Parcel A and Parcel C do not have individual

1 prices. Parcel B is now 1399999. The entire 1912 acres
2 is now 1699999.

3 Q. Why did you remove the option of purchasing
4 Parcel A or Parcel C separately?

5 A. Because they weren't really viable to be sold
6 that way.

7 Q. Who told you that?

8 A. Blaine, Jacqueline and I talked about it or at
9 least had e-mail communications about it, and it made
10 the most sense. Alan Thome also had provided some input
11 by e-mail.

12 Q. Are you aware that when you made your initial
13 investment that the plan was to develop Parcel B and to
14 sell Parcels A and C?

15 A. That was not the specific plan laid out to us.

16 Q. What was the specific plan that was laid out to
17 you when you made your investment?

18 A. We were going to develop Parcel B.

19 Q. You need to let me finish asking my question. It
20 helps the court reporter.

21 What was your understanding of the initial plan
22 when you made your investment?

23 A. That the plan was to get the entitlements and
24 get the tentative plat on Parcel B, and then decisions
25 would be made relative to C or A. The possibility

1 always existed that we would sell or could sell C or A.
2 If we got enough offers or good enough offer, anything
3 is for sale. But specifically, no, it wasn't just we
4 are absolutely going to sell C or A. It was talked
5 about. It was talked about among our group at times,
6 what we would or wouldn't want to do when we still
7 thought this thing was viable. But specifically, that
8 was not the specific plan, but we were very open to
9 selling either/or both of those parcels.

10 Q. Do you know an individual named Jim Peterson?

11 A. Yes.

12 Q. Did you understand that he was listing Parcels A
13 and C around the time that you made your initial
14 investment?

15 A. No. I don't believe -- no.

16 Q. Do you know if Mr. Peterson has ever had a
17 listing for these properties or any of this property?

18 A. I think I read something somewhere, but I don't
19 know at what point or that he did or didn't have a
20 listing for that. I know that Jim was trying to sell
21 it, but I don't know that he had a specific listing
22 agreement on it.

23 Q. From the time period of 2009 to today, were there
24 any disagreements among the investors in terms of what to
25 do with the parcels?

1 A. From what date?

2 Q. From December 2009.

3 A. Well, since we started with 17 people and
4 narrowed it down to, say, 11, of course, there are going
5 to be different opinions on what should or shouldn't be
6 done. But there were never any major arguments about
7 what we're going to sell when. I mean as an example,
8 Mick Manley was like, he was in his 40s; I'll hold onto
9 this thing forever. Others, and most of us actually,
10 that were looking at this and thought it was a two to
11 four year thing at max would have other ideas. Quite
12 honestly, if somebody came to us with a million dollars
13 for Parcel C or something, I would have had to consider
14 it or, you know, a big price for any of this depending
15 on the time frame, just like any investment deal or
16 anything that you do, whether it's a stock or whether
17 it's land. If it looks good at the time, you make the
18 decision at that time based on the circumstances.

19 Q. Were there any disagreements between any of the
20 investors and Mr. Thome concerning what to do with any of
21 these parcels during that same time period?

22 A. I couldn't answer for Alan Thome.

23 Q. Let me --

24 A. You just asked me whether there was any
25 disagreements between Alan Thome and any of the

1 investors, right?

2 Q. I'm going to ask a better question. Your point
3 is well taken.

4 Are you aware of any disagreements between Alan
5 Thome and any of the investors from 2009 to the present
6 concerning what to do with the property?

7 A. Not that I'm aware of.

8 Q. What is the agreement, if any, that you have with
9 the Esches about the property at this point?

10 A. What is the agreement we have?

11 Q. Yes.

12 A. Esch is the lien holder. We defaulted on a lump
13 sum payment that was due roughly around the third week
14 of May, and Esch is going to foreclose on the property.

15 Q. Since 2009, has there been any interest in the
16 development of Parcel B as it was originally intended?

17 A. I couldn't answer that question completely since
18 Alan Thome was really the development arm and the one
19 working with any developers or anybody else that may
20 have come to the scene, and up until the end of last
21 year was the manager of Cochise County 1900. So I
22 couldn't answer that question.

23 ALJ STERN: Excuse me, if someone came to you
24 today and they said we want to buy Parcel B, who would
25 sign the agreement for the seller?

1 THE WITNESS: Me.

2 ALJ STERN: You?

3 THE WITNESS: Yeah, I'm now the manager of
4 Cochise County 1900, too.

5 ALJ STERN: So you manage 1900, LLC? 1900, what
6 is it? 1900 Investors, LLC?

7 THE WITNESS: LLC, that was the money arm.

8 ALJ STERN: And then Cochise County?

9 THE WITNESS: Yeah, till the end of last year.

10 ALJ STERN: Okay. Go ahead.

11 BY MR. SCHULMAN:

12 Q. If Mr. Thome had all the money that he claimed he
13 needed to do the entitlement work, do you believe that the
14 situation with the properties would be any different today
15 than they are now?

16 A. Obviously, yes.

17 Q. How?

18 A. Well, we wouldn't have -- the 1900 Investors,
19 the monied investors there wouldn't have had to put in
20 another \$200,000 just to get to the plat. And depending
21 on, you know, time frames and everything else, we made
22 three annual payments of \$190,000 yet on the property.
23 Repeat the question, again, please.

24 Q. Sure. If Mr. Thome had all the money that he
25 claimed that he needed to get through the entitlement

1 work, do you believe that the properties would be in any
2 different situation than they're in right now?

3 A. Yeah, the properties or group? I'm sorry, I'm
4 not trying to be difficult.

5 Q. The properties.

6 A. Well, the tentative plat had been gotten to. So
7 that had happened. The physical -- the property is the
8 property; the market is what the market is. Our group
9 would not have been putting in three payments or
10 \$200,000 towards tentative plat, so we would sitting on,
11 at least sitting on the raw land without going belly-up.

12 Q. I understand. These are monies that you all
13 agreed to pay after December 2009 when you took over
14 Parker Skylar, right?

15 A. Yeah.

16 Q. I want to focus on the properties themselves, and
17 I understand your point with respect to the additional
18 monies that you all voluntarily put in, more into the
19 project.

20 But what I'm getting at is that you don't have
21 any houses built on Parcel B today, do you?

22 A. Let me answer your question. The piece of dirt
23 is the same as it's always been.

24 Q. Right.

25 A. Except, I'm sorry, except for some improvements

1 with wells and things like that. Yeah, it's the same
2 dirt.

3 Q. And nothing Mr. Shudak did or didn't do would
4 have had any impact on what the status is of Parcel A, B
5 or C today?

6 A. The dirt is the same. No.

7 Q. But can you answer my question?

8 A. Yeah, I said no.

9 Q. Nothing Mr. Shudak did or didn't do had any
10 impact on Parcel A, Parcel B or Parcel C as they sit there
11 today, correct?

12 A. And I said that's correct, yes.

13 MR. SCHULMAN: No further questions, Your Honor.

14 Thank you.

15

16 EXAMINATION

17 BY ALJ STERN:

18 Q. You know, I'm trying to see what's going to
19 happen to this, and the way it looks to me, Mr. Schwank,
20 you don't have any potential buyers for any of the
21 parcels, right?

22 A. No.

23 Q. I mean in terms of valuation, I'm looking at
24 Exhibit R-2 here, something starting at \$500 an acre, is
25 that comparable to the area?

1 A. Yeah, and that's been removed now on the latest
2 website. But yeah, they're all over the place. To give
3 you an example, Your Honor, the property is located, the
4 main Section B that was going to be developed, the 720
5 acres, just adjacent to that there's 40-acre parcels
6 that are listed for a couple thousand dollars an acre.
7 Cochise County is a very sleepy area. There's a lot of
8 property for sale down there that we found out after the
9 fact, after investing, in different places that people
10 have signs on. There's not a lot of aggressive selling
11 going on. There's no buying going on.

12 So yeah, to answer the question of -- yeah, I
13 mean this, relative to other properties and where
14 they're located should be ridiculously cheap now that
15 we've dropped it to 16999 for the whole thing.

16 Q. Well, I mean, you met Mr. Shudak, and you were
17 talking to him about, I guess, the way you normally talk
18 about something like this. How did the idea of parting
19 with hundreds of thousands of dollars come up for an area
20 that doesn't have much potential from what you just said?

21 A. You mean way back then?

22 Q. Yeah.

23 A. Well, at that point in time -- and again, it
24 really feels real stupid after the fact, but there was a
25 lot of us stupid in this thing. When you looked at it

1 because of where we're located, we're five minutes from
2 the Border Patrol.

3 Q. Border Patrol station, you mean?

4 A. Naco Border Patrol station. We were 20 minutes
5 to a half hour from the military base down there.
6 Sierra Vista, when we did a tour of it -- and others
7 did, too. Craig Swandal was one that had done a tour of
8 this, too, in our group. When you went down there,
9 everything was booming as far as they were selling
10 houses. It was a totally different economy and
11 environment than up in the Phoenix area or anything
12 else. Plus this was 2008 when things were just -- they
13 dumped right after that. But at that point in time,
14 yeah, we had appraisals that said \$3,500 an acre.
15 That's what Shudak gave us. The properties that had
16 sold, there was appraisals on them. That's what it ran
17 to. So here we are, a thousand bucks an acre is
18 basically what they bought it for originally. We're
19 going to do this stuff. The Border Patrol was
20 expanding, which it did.

21 Q. How many -- I mean you're talking a lot of
22 acreage. How many Border Patrol did you think they were
23 hiring?

24 A. I know. That and the base. There was housing
25 needs for -- they were talking about \$200,000 and less

1 houses they were going to do. There was a lot of other
2 housing selling in Sierra Vista on 8,000 square foot
3 lots for more money than that.

4 That's what everything was based on is that this
5 movement and the growth down there was going to
6 continue. And it wasn't just on selling houses to the
7 Border Patrol. But there was no housing for sale in
8 Bisbee to speak of. There's no land there to sell.
9 And, you know, the location, I mean that was --

10 Q. How many miles out of Sierra Vista is this
11 location?

12 A. Probably 15 or so. Basically about five minutes
13 from Bisbee.

14 Another thing is there had been a development
15 called Mule Mountain Village which had been just east of
16 our Section C on that map, which was closer to Bisbee.
17 Mule Mountain Village, there was property that had sold
18 there in 2005 for, I think, around \$6,500 an acre.

19 There were other things there that made it seem
20 like, okay, we've got the appraisal. We've got this.
21 We've got the growth in the Sierra Vista area for
22 housing. There seemed to be a need.

23 Q. Okay. I'll not ask you any more questions.

24 Do you have any redirect for the witness?

25 MR. SCHULMAN: Your Honor, I'm sorry, can I -- I

1 would like to move in to admit Exhibits R-1 and R-2.

2 ALJ STERN: Any objections?

3 MR. MILLECAM: I have some objections with R-2.

4 Namely, we would like to get identifying information
5 redacted before it's put into evidence. We see some
6 addresses, e-mail addresses.

7 ALJ STERN: Mr. Schulman, do you have any
8 trouble with that?

9 MR. SCHULMAN: I guess I'm ambivalent about it.
10 This is off the Internet. I'm not sure why we need to
11 do any redactions. It's not a document that's being
12 produced by the Division. It's not being produced
13 through their investigation. So I don't -- I appreciate
14 their concerns, but I don't think their concerns are
15 applicable to an exhibit that is a public document that
16 we're introducing as an exhibit.

17 MR. MILLECAM: Well, that's true, it's off the
18 Internet. It wasn't tied with a public hearing before
19 this. This is a property that people are trying to
20 sell. This is a different situation.

21 ALJ STERN: Well, I don't see any problem with
22 Exhibit R-1.

23 MR. MILLECAM: R-1 we don't object to.

24 ALJ STERN: Exhibit R-1 is admitted.

25 (Exhibit R-1 was admitted into evidence.)

1 ALJ STERN: With respect to R-2 -- so the main
2 things that I would see here, I guess, you don't want to
3 give Jacqueline Drake Realty a free advertisement? And
4 the LLC address and those websites and phone numbers, is
5 that what you're objecting to? I'm not sure what there
6 is inside. I've looked through here a few times, and
7 the pages -- the interior pages of R-2 don't really have
8 much.

9 MR. MILLECAM: Just one moment, Your Honor.

10 (A brief pause.)

11 MR. MILLECAM: I guess our main concerns are the
12 personal contact information for primarily Mr. Schwank.
13 It looks like Mr. Miller's is a business address.
14 Martin Schwank, I believe that that is his personal
15 e-mail as well as personal phone number.

16 ALJ STERN: So your main concerns are then
17 Mr. Miller, Mr. Schwank, and Ms. Drake?

18 MR. MILLECAM: I believe that Mr. Schwank
19 testified that JacquelineDrake.com is a business address
20 and that Modern Insights is Mr. Miller's company. So
21 the answer to that is our main concern is with
22 Mr. Schwank's personal information.

23 ALJ STERN: That's what you're concerned with.
24 Okay.

25 Mr. Schwank, let me ask you, you're on the

1 stand. Do you have any objections to this material? As
2 far as that would go, this would go into the record of
3 this proceeding. Your e-mail address and your phone
4 number would be available if we say, if you agree. If
5 you don't agree, we can simply have the official version
6 of R-2, we could have Mr. Schulman delete that little
7 bit about your e-mail and phone number.

8 THE WITNESS: I guess I would rather have the
9 e-mail and phone number deleted. It would be nice to
10 have a current copy of what this is.

11 ALJ STERN: Okay. Mr. Schulman, how does that
12 sound to you?

13 MR. SCHULMAN: Your Honor, I'll do it. I don't
14 think there's a legal basis for it, but I'll do it.

15 ALJ STERN: I know in a lot of these
16 proceedings, I see stuff that's redacted. I sometimes
17 can't figure out what's in the material after they
18 redact so much. But since the point has been raised,
19 would you on the official R-2 for the court reporter's
20 copy remove that material or just black it out or
21 something, strike it out?

22 With that done, R-2, your objection to it is
23 removed, I assume?

24 MR. MILLECAM: Yes.

25 ALJ STERN: Okay. Exhibit R-2 is admitted with

1 the redaction under Mr. Schwank's name and his phone
2 number, and I'll do it on my copy, too.

3 (Exhibit R-2 was admitted into evidence.)

4 ALJ STERN: Okay. R-1 and R-2 we've dealt with.
5 Mr. Millicam, do you want to redirect your witness here
6 a little bit?

7 MR. MILLECAM: Yes, I do. Just give me one
8 minute to look at my notes.

9 ALJ STERN: Okay.

10

11 REDIRECT EXAMINATION

12 BY MR. MILLECAM:

13 Q. Mr. Schwank, you discussed with Mr. Schulman how
14 your money was going to be spent in this project. The
15 discussion was about whether CC 1900, Cochise County 1900
16 had already purchased the land. His question was about
17 what your money was to go to.

18 My question is, could you once again describe how
19 you expected your monies to be spent in this investment?

20 A. We expected every dollar of the money to go
21 towards the development of the project and the
22 entitlement of it and anything to do with the property.

23 Q. Did you direct how your monies were spent after
24 you transferred them to Parker Skylar?

25 A. After our original investment was transferred to

1 Parker Skylar?

2 Q. Yes, that's correct.

3 A. I couldn't tell you entirely because the monies
4 are supposed to have gone to Cochise County 1900, and I
5 didn't have --

6 Q. Did you have control over how the monies were
7 used after you wrote your checks to Parker Skylar?

8 A. No.

9 Q. But it was your understanding that they could
10 have been used for entitlements; they could have been used
11 to make payments to purchase land?

12 A. That was my understanding, yes.

13 Q. It was your understanding -- what was your
14 understanding about which bank account you were paying
15 your money to?

16 A. Our money was being paid to Parker Skylar.

17 ALJ STERN: I think in one of the exhibits that
18 we looked at -- I don't know the number, do you know
19 which one I'm referring to?

20 MR. MILLECAM: 53 is my guess, but I'm not sure.
21 Are you talking about --

22 ALJ STERN: Exhibit S something with the
23 canceled checks this morning.

24 MR. MILLECAM: Yes, that would be S-53.

25 ALJ STERN: S-53. So those checks were written,

1 if I recall correctly, to Parker Skylar, right?

2 THE WITNESS: Yes.

3 ALJ STERN: Okay. Go ahead.

4 BY MR. MILLECAM:

5 Q. And Parker Skylar was to transfer the money to
6 Cochise County 1900; is that correct?

7 A. That would have been my understanding, yes.

8 Q. There was a little bit of testimony I wanted to
9 clarify on your cross-exam. Mr. Schulman asked you about
10 when the investment went bad. The way he phrased that
11 sort of implied that it went bad in 2009.

12 Just for clarification, 2009 is when you
13 discovered there was a problem, correct?

14 A. Right, correct.

15 Q. But it's not necessarily when problems with how
16 your money was spent began?

17 A. No.

18 Q. There were some questions asked about how you
19 learned about what work was being done by Thome and how
20 you learned about this work. Can you again describe how
21 you learned about the work being done by Thome on the
22 property?

23 Let's set time frames here because it's very
24 relevant for this case. From the time you invested to
25 December of 2009, how did you learn about how Cochise

1 County 1900 and Alan Thome were applying investor funds?

2 A. How did I learn about them?

3 Q. Yes, what was your source of information as to --

4 A. Pat Shudak. And again, our assumption all along
5 was the monies had gone to Pat Shudak and that Cochise
6 County, Alan Thome would go to Shudak whenever he needed
7 the monies and/or the monies just went straight to
8 Cochise County 1900. I quite honestly didn't give it a
9 lot of thought after that because that was the
10 assumption.

11 Q. You met with Alan Thome once prior to investing;
12 is that correct?

13 A. Right.

14 Q. When did you meet with him the next time?

15 A. The 2009 meeting, the one he called for.

16 ALJ STERN: Did you ever know anything about
17 Mr. Thome before December 2009?

18 THE WITNESS: Yeah. Like I said, we met with
19 him before we made the investment.

20 ALJ STERN: Oh, you did?

21 THE WITNESS: Yeah.

22 ALJ STERN: Down there in Sierra Vista?

23 THE WITNESS: No, at his office in Mesa. I
24 testified to that earlier, that we had gone out there
25 and met with him and Shudak at his office in Mesa to see

1 all the plans and anything else that he had to show us
2 relative to what he was working on.

3 ALJ STERN: Okay. So the money was supposed to
4 go from the investor to Parker Skylar?

5 THE WITNESS: Right.

6 ALJ STERN: Then from there, Mr. Shudak was
7 supposed to transfer the funds to Cochise County 1900,
8 right?

9 A. Cochise County 1900 paid all the bills.

10 Q. That was whatever was going on with the land?

11 A. Right.

12 Q. And Cochise County 1900 had signed a contract
13 with -- who was it again? To buy that land? With --

14 A. Oh, Lee Esch. That's who they bought the land
15 from.

16 ALJ STERN: That's who they bought the land
17 from?

18 THE WITNESS: Yes.

19 ALJ STERN: And in the interim, also, Mr. Shudak
20 had to deal with Nascent, right? That's that other
21 company, \$250,000?

22 THE WITNESS: Well, after the fact. We didn't
23 know it when we were investing. Again, apparently,
24 Shudak had made a deal with Nascent for a quarter
25 million dollar loan to purchase the property.

1 ALJ STERN: So that's just another \$250,000 to
2 go into the mix along with you and your other -- how
3 many investors was it, 17?

4 THE WITNESS: It started at 17. I think we were
5 at, if you rough it out between the LLCs, it's 11 or
6 12.

7 ALJ STERN: Okay. But somewhere in between you
8 all, your 17 people --

9 THE WITNESS: Right.

10 ALJ STERN: -- or families, whatever, Shudak did
11 another deal with this Nascent for another \$250,000,
12 right? That money was supposed to go to --

13 THE WITNESS: He had actually done that way back
14 when apparently before a lot of us had even put our
15 monies in with Shudak.

16 ALJ STERN: You were in 2008?

17 THE WITNESS: Yes.

18 ALJ STERN: A lot of the people in your group
19 were in 2008 then?

20 THE WITNESS: Yeah, yeah, I mean it started in,
21 I believe, early 2008 with Tim Olp. Then it went to
22 Craig Swandal, and then it went to me, and it just kept
23 going on through to nine different people.

24 ALJ STERN: Then you're saying Nascent snuck in
25 there somewhere earlier, right?

1 THE WITNESS: When the property was purchased,
2 yes, earlier.

3 ALJ STERN: And the Cochise County 1900 deal
4 with Mr. Esch, who signed for that?

5 THE WITNESS: I don't have the paperwork in
6 front of me, but I'm going to assume Alan Thome was the
7 manager of Cochise County 1900.

8 ALJ STERN: And was Parker Skylar involved with
9 Cochise County 1900, too?

10 THE WITNESS: Parker Skylar was Shudak, and
11 Poncho Holdings was Alan Thome. Those are the two
12 entities that were in Cochise County 1900.

13 ALJ STERN: And then now your other new deal,
14 still trying to save this, is this 1900 Investors, LLC?

15 THE WITNESS: Right.

16 ALJ STERN: That's the last? There's nobody
17 else after that, is there?

18 THE WITNESS: No.

19 ALJ STERN: Okay. Go ahead. I'm sorry to
20 interrupt.

21 MR. MILLECAM: That's fine. It's a lot of
22 entities to keep track of. If it would help, we could
23 go over a little bit of Exhibit S-50. This is the
24 Nascent loans.

25 ALJ STERN: Okay, sure.

1 MR. MILLECAM: Nascent Investments' complaint
2 against Mr. Shudak. This will at least put some dates
3 on there for you.

4 BY MR. MILLECAM:

5 Q. Mr. Schwank, go ahead and look at that. Go ahead
6 and thumb through about ten pages in to the Exhibit A-2,
7 that page. This is the secured promissory note.

8 ALJ STERN: You said ten pages into the
9 complaint?

10 MR. MILLECAM: After the complaint, about ten
11 pages into our exhibit, Exhibit S-50.

12 MR. SCHULMAN: Your Honor, I object to the scope
13 of this redirect. I didn't introduce the complaint as
14 an exhibit in my cross.

15 ALJ STERN: Overruled. Go ahead.

16 MR. MILLECAM: Your Honor, I'm just going over
17 this briefly to nail down the dates where you can see it
18 in the agreements as to who signed them with Nascent
19 Investments. The promissory notes should be all that we
20 need to look at.

21 BY MR. MILLECAM:

22 Q. Mr. Schwank, you're looking at the page marked
23 A-2 of the secured promissory note; is that correct?

24 A. Yes.

25 Q. What is the date of that promissory note?

1 A. May 22.

2 Q. Who are the parties to that promissory note?

3 A. Parker Skylar and Nascent Investments.

4 Q. What is the amount of the note?

5 A. \$250,000.

6 ALJ STERN: Wait, wait, wait. There's another
7 one floats in here now. Spirit Graphics, that's in this
8 agreement. Where are they from? Some friend of
9 Mr. Shudak's, or what's going on now?

10 THE WITNESS: That's Shudak.

11 ALJ STERN: That's Mr. Shudak again?

12 THE WITNESS: Oh, yeah.

13 ALJ STERN: Okay. Where did they come from?
14 They don't seem to have any other interest in this other
15 than this note maybe? If you know.

16 THE WITNESS: Spirit Graphics was a company
17 Shudak had that, magazine print, picture advertising or
18 something, with one of the big magazine companies. It
19 was another LLC he had. He's got a lot of them.

20 ALJ STERN: So they were borrowing the money
21 from Nascent, which is this attorney. Okay.

22 BY MR. MILLECAM:

23 Q. Can you flip to the next page of that,
24 Mr. Schwank? Who is the borrower listed there?

25 A. I'm sorry?

1 Q. Who is the borrower at the bottom?

2 A. Pat Shudak. It says Borrower: Parker Skylar &
3 Associates.

4 Q. You recognize that signature there as
5 Mr. Shudak's?

6 A. Yes.

7 Q. He's signing in his capacity as manager; is that
8 correct?

9 A. Yes.

10 MR. MILLECAM: Your Honor, I didn't mean to go
11 too far down the path. I just wanted to get that in
12 there that the date on this was May 22, 2008.

13 ALJ STERN: Okay.

14 MR. MILLECAM: So we could get the chronology.
15 BY MR. MILLECAM:

16 Q. I'm going to go ahead then and go back to a few
17 of the questions that you were asked on your cross-exam.
18 Can you go ahead and put away S-50 and take a brief look
19 at some of the investor documents that you looked at with
20 Mr. Schulman in Exhibit S-30?

21 A. Okay.

22 Q. In Exhibit S-30, if you flip through the Bates
23 numbers at the bottom of the page, can you turn to page
24 number ACC 4464, the page you went over with Mr. Schulman?

25 A. Got it.

1 Q. That top paragraph, Paragraph A, Representations
2 of Warranties, can you look about halfway into that?
3 There's a sentence that says, "I and my advisors have had
4 a reasonable opportunity;" is that correct?

5 A. Got it.

6 Q. Who is the "I" in that sentence, if you
7 understand this document?

8 A. Me.

9 Q. Let me just read that sentence, and you tell me
10 if I read it correctly. It says, "I and my advisors have
11 had a reasonable opportunity to ask questions of and
12 receive answers from representatives of the Company
13 concerning the Company, its business and the units, and
14 all such questions have been answered to my full
15 satisfaction."

16 Who is the company in that sentence?

17 A. Parker Skylar.

18 Q. And did you have a chance to ask questions of the
19 company? Who would you have asked those questions?

20 A. Pat Shudak.

21 Q. Mr. Shudak answered your questions?

22 A. I believe so, as much as he could.

23 Q. Did you rely on his answers to those questions in
24 making your investment?

25 A. Absolutely.

1 Q. Let's talk a little bit -- a lot of your
2 cross-exam dealt with what happened after you made your
3 investment and after Mr. Shudak resigned.

4 Before that happens, let me ask you again, what
5 management role did you intend to have when you invested
6 with Parker Skylar?

7 A. None.

8 Q. Did you expect to manage Parker Skylar?

9 A. No.

10 Q. Did you in fact ever manage Parker Skylar?

11 A. No.

12 Q. So you're a manager of 1900 Investors; is that
13 correct?

14 A. Yes.

15 Q. Mr. Schulman asked why you decided to reorganize
16 into 1900 Investors. Can you again describe whose
17 decision it was to reorganize into 1900 Investors rather
18 than continue with Parker Skylar?

19 A. As best I can remember, it was just a committee
20 decision. I probably talked to our attorney Richard
21 Chambliss about it briefly. But I can't recollect
22 specifically what we decided there. I think the general
23 consensus was that it was just simpler given the mess of
24 all the paperwork that was Parker Skylar and the varied
25 interests and the assignments and all the rest of that.

1 Q. Can you describe your experience in reorganizing
2 real estate development entities?

3 A. You mean prior to this?

4 Q. Yes.

5 A. None.

6 Q. Did you have any?

7 A. None.

8 Q. What about people on the committee, what was
9 their experience in reorganizing real estate finance
10 entities?

11 A. None.

12 Q. What was your experience with corporate
13 restructuring?

14 A. None.

15 Q. Mr. Schulman asked you a few questions about your
16 decision not to sell back the property at a few occasions.
17 You described that as a bad judgment call. What was your
18 real estate experience, real estate investment experience
19 at the time that would have helped you make that judgment
20 call?

21 A. Nothing but buying homes like most people.

22 Q. Mr. Schulman also asked you about your experience
23 in Topaz County Water District. Can you describe your
24 prior experience in establishing water districts for real
25 estate development?

1 A. None.

2 Q. What was your prior board experience in water
3 districts for real estate developments?

4 A. None.

5 Q. At some point you hired Mr. Blaine Miller as a
6 consultant. Why did you need to hire Mr. Miller? Can you
7 explain why?

8 A. The development process was not progressing as
9 our group wanted. We basically lost faith in Alan
10 Thome. We wanted to get an outside objective opinion to
11 things. We had used Blaine for a couple of small
12 projects that we paid him directly for, and then we
13 eventually made the decision, and we decided that we
14 wanted Alan Thome removed or to remove himself as the
15 manager of Cochise County 1900.

16 We decided that we needed some expertise that
17 obviously I didn't have and we didn't have. So Blaine
18 was willing to take this on on a percentage basis,
19 period, to help.

20 Q. Along the same lines of questioning as to why you
21 didn't sell the properties separately or flip them
22 earlier, did you ever have an opportunity to sell the
23 property? Did you ever have an offer on the property?

24 A. Not that I know of. There was one, I don't know
25 if it would even be a discussion, once when Shudak

1 approached me several months after we invested. I
2 couldn't pin down the exact time frame of when that was,
3 and it was almost kind of a hypothetical question that
4 he came to me and said it was possible that Alan Thome
5 might have somebody that wanted to buy the property or
6 part of the property but it would only get us like 20
7 percent. Again, this is right after the investment had
8 happened, and the discussions had been all along from
9 Shudak that oh, it will be six to eight times your
10 money, yadda, yadda, yadda, and so it was like we're not
11 really interested in doing that. But there was never an
12 offer. There was never anything specific presented to
13 us.

14 Q. Had there been an offer or specific details at
15 that time, what decision-making authority would you have
16 to act?

17 A. I wouldn't have the decision-making authority.
18 I would have the authority to take it to our group and
19 put it to a vote.

20 Q. Did any such votes ever occur in the group?

21 A. There was never any offer made, anything
22 specifically brought up, so it never even came to that.
23 This was an individual opinion that Shudak asked of me
24 as an investor, and this was before -- hang on a minute.
25 This is before we had re-formed as 1900 Investors. I'm

1 sorry. I'm getting confused on the time frames here.
2 This is still before. This is several months after we
3 had originally invested. It's sitting out there, and
4 that's when this discussion took place. We hadn't
5 re-formed under -- none of this had fallen down yet. We
6 were still in the honeymoon phase.

7 Q. Mr. Schulman asked you about the agreement with
8 the Esch. I just want to clarify a little bit who the
9 parties are to that agreement. Is 1900 Investors a party
10 to that agreement?

11 A. No.

12 Q. Is Parker Skylar a party?

13 A. I believe so because it's Cochise County, which
14 is Poncho Holdings and Parker Skylar.

15 Q. Have you signed that agreement with the Esches?

16 A. No.

17 Q. Are you in any way a party to it?

18 A. No.

19 Q. Let me ask you a few clarifying questions. At
20 one point during your cross-exam, you talked about nothing
21 that Shudak did or didn't do could have any impact on the
22 project.

23 A. Okay. What's the question?

24 Q. The question I have is, first off, you've
25 described earlier Shudak's role was getting money to the

1 project?

2 A. Right.

3 Q. Is that correct?

4 A. Correct.

5 Q. If Shudak failed to get money to the project,
6 wouldn't that have an effect on it?

7 A. Massively, yes, because Alan was out there using
8 the engineers and the hydrologists and everybody else he
9 had to get, and he was creating debt that had to be
10 paid, so yes.

11 Q. When Shudak resigned, did his resignation or the
12 need to -- excuse me. Let me start that one over.

13 When Mr. Shudak stopped communicating with you
14 investors and you had to talk with Alan Thome directly,
15 did that have an impact on the project?

16 A. Absolutely.

17 Q. Did his absence have an impact on the project?

18 ALJ STERN: Whose?

19 BY MR. MILLECAM:

20 Q. I'm sorry, did Mr. Shudak's absence as manager of
21 Parker Skylar have an impact on the project?

22 A. You mean after he resigned?

23 Q. Yes. Did his resignation have an impact on the
24 project?

25 A. Yes.

1 Q. It forced you to reorganize and regroup and
2 determine who had invested; is that correct?

3 MR. SCHULMAN: Objection, Your Honor. Counsel
4 is testifying for the witness, asking questions that are
5 leading and not based on any of the foundation of the
6 testimony that's been entered yet today.

7 ALJ STERN: Yeah, perhaps you could --

8 MR. MILLECAM: Let me rephrase the question.

9 BY MR. MILLECAM:

10 Q. Can you describe the impacts, if any, that
11 Mr. Shudak's resignation had on the Parker Skylar
12 investors?

13 A. Yes, we had to basically find out who everybody
14 was. We had to vet all the investors. We had to have
15 numerous meetings and communications to try and
16 reorganize and replan what we wanted to do, if we wanted
17 to do something, how much everybody was going to get,
18 how much more everybody was going to put into it, and
19 basically just restructure a whole lot of people into
20 one hopefully cohesive unit that could try and save this
21 thing. So it was a large impact.

22 MR. MILLECAM: Can I take one brief moment to
23 look at my notes?

24 ALJ STERN: You can take a look at your notes.
25 I have a question.

1 FURTHER EXAMINATION

2 BY ALJ STERN:

3 Q. Mr. Schwank, now, your investment was around,
4 sometime, I think May 2008 and maybe even as late as
5 December 2008, correct?

6 A. July of 2008 and then \$36,000 in November of
7 2008.

8 Q. November 2008. So up until that time everything
9 is hunky-dory, right?

10 A. Well, yeah.

11 Q. Okay. When did you first meet Mr. Thome? Was
12 that before --

13 A. Yeah, it was before July of 2008.

14 Q. Okay. Well, were you the first person Mr. Thome
15 contacted about a problem with money coming to Cochise
16 County 1900?

17 A. I don't know.

18 Q. Well, when did you find out that there was a
19 money problem?

20 A. That was -- the definitive time was the meeting
21 with Thome.

22 Q. That was in December 2009, right?

23 A. Yeah. All I can go by, you know, looking at
24 this again, I was getting the time frames mixed up
25 because it was '08 when I did the last investment of

1 \$36,000. So before we got to the meeting with Thome in
2 '09, things were getting shaky with me, us, and Shudak
3 for a while through the summer of 2009 because there
4 wasn't enough communication. There wasn't --
5 everything -- there was no warm fuzzies, and stuff
6 wasn't happening. I wasn't getting any answers. You
7 would ask for things; he wouldn't get back to us.

8 There was various things going on prior to that.
9 So I had a lot of bad feelings. And, you know, I was
10 thinking about it over the lunch break, too. I may have
11 had and I believe I had one communication with Thome
12 maybe on a phone call somewhere months before that
13 December date, somewhere between the summer and the
14 fall, and I'm just asking how everything is or what's
15 going on, and he's like, well, it's hard getting money
16 from Shudak sometimes, but it's coming in, and we're
17 still moving along. But Alan is a very
18 everything-is-always-going-to-be-okay kind of a guy.
19 But I had thrown that out there and contacted him
20 directly, because prior to that, it was always Shudak,
21 Shudak, Shudak. I didn't go to the source. I wasn't
22 going to disrupt things.

23 So then by the time Alan called, all of a
24 sudden, it's like, whoa, he's like everything is
25 terrible. So that was that. So I don't know if I was

1 the first. Like I said, he gave me the names that he
2 had contacted John Schnaible himself who was the advisor
3 to some of our guys, and then there were the people at
4 that meeting. So I can't say at the point of that
5 meeting it was shocking because it was starting to fall
6 apart.

7 ALJ STERN: All right. Mr. Millecam.

8 MR. MILLECAM: No further questions, Your Honor.

9 ALJ STERN: Do you have anything else you want
10 to ask the witness?

11 MR. SCHULMAN: I have a few questions just to
12 clarify some testimony.

13 ALJ STERN: Sure. Go ahead.
14

15 RECROSS-EXAMINATION

16 BY MR. SCHULMAN:

17 Q. Mr. Schwank, you recall I asked you in my
18 cross-exam whether or not you were aware of any disputes
19 any of the investors had with Mr. Thome from 2009 to the
20 present?

21 A. Yes.

22 Q. Okay. And you said that you weren't aware of any
23 such disputes?

24 A. From 2009 to the present?

25 Q. Yes.

1 A. Okay. Thinking about it now, you said 2009 to
2 the present. Yeah, obviously, there were some disputes
3 with Mr. Thome. I'm sorry. Because we finally ended up
4 removing him in December of last year.

5 Q. So you testified on redirect that the development
6 process was not progressing as you had hoped or expected;
7 is that generally correct?

8 A. Correct.

9 Q. What was it about the development process that
10 was not happening as you had hoped?

11 A. Alan wasn't being able to get any developers.
12 He wasn't able to go out and possibly get any other
13 monies, investment monies, development money, anything
14 else to happen than had been ongoing for a while, and
15 that was the biggest problem.

16 Also, we were making these payments year after
17 year. We paid in to get to tentative plat, and we were
18 making annual payments. We kept tumbling toward this
19 expiration date of the lump sum payment and nothing good
20 was happening.

21 Yeah, so when you were asking about disputes, I
22 was thinking about everybody else but me, quite
23 honestly, because being the manager of the investment
24 group, I was the one dealing with him, and yeah, Alan
25 and I had disputes.

1 Q. What specifically did you have disputes with
2 Mr. Thome about?

3 A. Just getting specific answers to numerous
4 questions that my wife and I were posing to him over the
5 past, God, year and a half. I mean some were easy, but
6 then as we put them on paper; we would do other things
7 and ask for specific answers, and it would always be,
8 well, let's just meet and talk about it. He didn't
9 really want -- it appears and appeared that he didn't
10 want to put anything on paper as to what was or wasn't
11 happening.

12 And we had had him in the past -- again, we're
13 talking a couple-year period here between
14 teleconferences and things like that. He was on a
15 teleconference a few times, and there were, I guess now
16 that you bring it up, disputes, conversations, people
17 asking what are we doing here, there, blah, blah, blah.
18 So it finally just ground down to a point after we had
19 made our annual payment in 2012 that, I'm like, you
20 know, this just is not going well here, and we weren't
21 getting the answers, and we would have discussions over,
22 well, we want to get an appraisal. Well, no, we
23 shouldn't get an appraisal. Well, why shouldn't we get
24 an appraisal? Well, we want to have a study. Got
25 Blaine Miller involved. He didn't want somebody else

1 involved. You know, but we hired him and did that. And
2 there were numerous other disputes that finally led to
3 us deciding that we would ask for his resignation.

4 Q. Well, I would like -- what other disputes did you
5 have with Mr. Thome?

6 A. I thought I just named some.

7 Q. You did. And then you ended it by saying there
8 were numerous other disputes.

9 A. I would have to actually go back to e-mails and
10 things that I sent him about questions of what we're
11 doing and when we're doing it and how we're doing it.

12 Q. So there are too many disputes with him that you
13 can recall?

14 A. No, not too many, but it was again, I was trying
15 to be a proactive manager advocating for our investment
16 group. So I would keep asking, you know, what are we
17 doing, when and how and what's going on with it.

18 Q. Did you find him to not be forthcoming as to what
19 was going on with the project?

20 A. I had trouble sometimes getting absolutely
21 direct answers to direct questions.

22 Q. And this is the same individual who planted the
23 seed in your head that all the monies that were raised
24 through Parker Skylar did not reach Cochise County 1900?

25 A. I don't know if he planted the seed. I can't

1 say that for sure, quite honestly.

2 Q. Well, did you have any concerns about money going
3 to Cochise County 1900 before Alan Thome called you in
4 December 2009?

5 A. Just like I had told the Judge earlier that
6 there might have been one other phone conversation
7 asking about what's going on, because I had concerns
8 about Shudak and him saying that there was a problem
9 getting money from Shudak to Cochise County. That would
10 probably be it.

11 Q. I didn't understand that last part of your
12 answer. Can you repeat it? I don't think I heard it
13 correctly.

14 A. Ask the question again, please.

15 Q. Well, my question to you was, prior to your phone
16 conversation with Alan Thome in December 2009, did you
17 have any concerns that money that was raised through
18 Parker Skylar was not going towards the project?

19 A. Yes.

20 Q. What was the basis of your concern prior to
21 December 2009?

22 A. I would say a lack of communication and answers
23 from Shudak, which led to my calling Thome and asking
24 him if there was any concerns or problems that he saw.
25 Again, I can't give you the exact time frame, but it's

1 probably late summer of 2009.

2 Q. Okay. So let me try to rewind this then. So now
3 your testimony is that you called Mr. Thome before
4 December 2009 and asked him whether or not all the money
5 being raised by Parker Skylar was going into Cochise
6 County 1900?

7 A. That wasn't the question that I asked him. I
8 called Alan up to ask him how the project was going, to
9 get a different opinion other than what I was hearing
10 from Pat Shudak, and asking him if everything seemed to
11 be going okay.

12 Q. Well, now in retrospect -- strike that. You
13 testified in your redirect that you've lost faith in
14 Mr. Thome, correct?

15 A. Yes.

16 Q. What has caused you to lose faith in Mr. Thome?

17 A. Aren't I answering the same things here?

18 Q. I don't know. I'm trying --

19 MR. MILLECAM: I'm going to object. He's
20 already asked him what the disputes were and why he
21 stopped losing faith. I don't know how many rephrasings
22 of the same question we need.

23 MR. SCHULMAN: Your Honor, if the witness
24 testifies that I lost faith in Mr. Thome because of all
25 the disputes I've had with him, then that to me is an

1 acceptable answer. I don't know the answer until I ask
2 the question.

3 ALJ STERN: Yeah. I'll overrule your objection.
4 You want to know what the basis of the complaints was,
5 right?

6 MR. SCHULMAN: No, his testimony -- I wrote it
7 down in quotes -- was that he lost faith in Mr. Thome
8 and I want to know why he lost faith in Mr. Thome.

9 ALJ STERN: That's what I thought I said. Why
10 did you lose faith in Mr. Thome? It took three years.
11 That seems like a long time.

12 THE WITNESS: Well, I mean, yeah, but this just
13 didn't happen in three years. It took a process of
14 going through; and as we got into 2009, I mean when we
15 got into two thousand --

16 ALJ STERN: '10, '11, '12?

17 THE WITNESS: Hang on. '12, you know, we had to
18 make that payment for that year, again, I start asking
19 more specific questions.

20 ALJ STERN: Payment, that payment being?

21 THE WITNESS: Paying the lump sum of \$190,000
22 that was an annual payment the investors had to come up
23 with.

24 ALJ STERN: For Mr. Esch?

25 THE WITNESS: Yes, each year. So as that one

1 approached, and a series of communications I had with
2 Alan, I would ask questions -- and I don't have those
3 e-mails in front of me -- you know, what's going on with
4 this, what's going on with that, how are we going to
5 market this, what else is happening with it, and
6 basically continuing to get unsatisfactory answers.

7 So that's the best I can describe it without
8 going back to e-mails to see what exactly I had sent and
9 asked him about. And quite honestly, some were quite
10 lengthy that my wife and I would put questions together
11 going what about this and this and this and this. How
12 is that going and the rest of it.

13 ALJ STERN: Where were your coming up with those
14 payments of \$190,000 in 2010, 2011, 2012 -- well, you
15 probably didn't pay 2012 if there's a foreclosure, did
16 you?

17 THE WITNESS: Well, the payment that was due
18 here in 2013 is what we didn't pay.

19 ALJ STERN: Oh, you didn't pay 2013.

20 THE WITNESS: We paid '10, '11, and '12, cash
21 calls to the investors. That's where they had to come
22 up with 3 times 190, another \$570,000.

23 ALJ STERN: Okay. Go ahead.

24 BY MR. SCHULMAN:

25 Q. You said that Mr. Miller had worked on some

1 projects for you guys before. Were they projects related
2 to Cochise County 1900?

3 A. Yes.

4 Q. What were those projects?

5 A. We asked him to look into the County and do an
6 evaluation of the land and the property, what was for
7 sale, his evaluation of the whole situation in Cochise
8 County and the possibility, probability or not of having
9 any success or, you know, just evaluating everything
10 going on down there and trying to get an opinion as to
11 how we should proceed, if we should proceed, can we
12 proceed.

13 Q. When did you engage Mr. Miller to do all of that?

14 A. I would have to look again. I think Blaine and
15 I go back probably to 2011 at some point. When we first
16 started asking him and talking to him about a couple
17 little things. But I would have to go look at my notes
18 to see when that exact study was done. He did a formal
19 study of this that we paid for.

20 Q. So who is "they"? 1900 --

21 A. 1900 Investors.

22 Q. So in that case, 1900 Investors paid Mr. Miller
23 directly?

24 A. Yes.

25 Q. And that was for the benefit of the project?

1 A. That was for the benefit of our 1900 Investors
2 to try and get a better grip on what we wanted to do or
3 not do.

4 Q. Right. But you didn't pay that money to Cochise
5 County 1900?

6 A. No, because in that capacity at that time, I was
7 only manager of 1900 Investors. We were the monied
8 group trying to figure this all out. So part of that
9 was spending some more money on Blaine to see what
10 somebody else thought.

11 Q. Mr. Millicam asked you a bunch of questions about
12 what you had to do with respect to the time period after
13 Mr. Shudak voluntarily resigned. But the truth of the
14 matter is that you didn't have to do anything. You didn't
15 have to ask Mr. Shudak to resign, did you?

16 A. Run that by me again.

17 Q. You didn't have to ask Mr. Shudak to resign all
18 of his interests in Parker Skylar, did you?

19 A. I'm a little confused. I don't --

20 MR. MILLECAM: In what sense did he not --

21 ALJ STERN: Wait, wait, wait, excuse me.

22 Everybody all can't talk at once. He can't keep up with
23 you. So you asked a question, and then you started
24 answering, and then the attorney for the Division
25 started to speak. So let's just wait a second.

1 Will you restate your question, and then before
2 you answer, he's going to say something.

3 BY MR. SCHULMAN:

4 Q. My question to you was, you did not have to ask
5 Mr. Shudak to resign all of his interests in Parker
6 Skylar, correct?

7 MR. MILLECAM: I'm going to object to form. I'm
8 trying to establish --

9 ALJ STERN: I'm trying to figure out the
10 question.

11 MR. MILLECAM: In what sense did he not have to?
12 In the sense that he wouldn't go to jail if he didn't?
13 I'm not sure what the relevance is of asking a question
14 that's so vague.

15 MR. SCHULMAN: Well, Your Honor, there was a
16 series of questions that were posed to this witness by
17 Mr. Millecum, that he had to manage the property and
18 that he had to do this, and that he had to make the
19 payments on the property, and this, that, and the other.
20 But the reality is that he didn't have to do any of
21 those things.

22 THE WITNESS: I would like to answer.

23 ALJ STERN: Excuse me. All right. If you can
24 answer the question, but it's my understanding
25 Mr. Shudak was the man raising the money that was then,

1 the money would then be transferred to this gentleman,
2 Mr. Thome, Alan Thome, and Mr. Thome was the developer
3 of the real estate. Well, not the developer of the real
4 estate, but he was the one handling getting the property
5 to such a state that you could then resell it to
6 investors. Am I correct, sir?

7 THE WITNESS: Yes. We did need to remove Pat
8 Shudak from the equation simply because we had lost
9 total faith in him, and we needed to control our own
10 money and our own destinies among our group.

11 ALJ STERN: So the members essentially, you at
12 this point there's over a hundred percent of you.

13 THE WITNESS: Yeah.

14 ALJ STERN: I guess.

15 THE WITNESS: Much more.

16 MR. SCHULMAN: Well, Your Honor, that hasn't
17 been established yet, with all due respect.

18 ALJ STERN: Well, let's say there's a hundred
19 percent, either way. Mr. Shudak, was he a member of the
20 LLC? I think he was at one point, right?

21 THE WITNESS: Well, yeah. The way he got paid,
22 again, Parker Skylar was his LLC, and the way Pat Shudak
23 would have gotten paid is whatever he didn't sell of a
24 hundred percent of Parker Skylar. So he sold somewhere
25 between 130 and 200 percent.

1 ALJ STERN: But when he resigned in December of
2 2009 --

3 THE WITNESS: Right.

4 ALJ STERN: -- he gave up all interest in the
5 company, correct?

6 THE WITNESS: Correct.

7 MR. SCHULMAN: My only point of this, Your
8 Honor, is that I think he answered in response to your
9 question, as of December 2009, I believe you just
10 testified that you and your investors controlled, you
11 and the investors controlled your own destiny, correct?

12 THE WITNESS: Once Shudak had resigned, yes.

13 BY MR. SCHULMAN:

14 Q. Yes, right. And so from that point forward, from
15 December 2009, the decisions that you and the other
16 investors were making were decisions that you all made on
17 your own?

18 A. Yeah.

19 Q. And you didn't have to continue to make payments
20 on the property, correct?

21 A. No.

22 Q. You could have attempted to sell the property in
23 January of 2010?

24 A. Of course.

25 ALJ STERN: Excuse me, if I understood these

1 things correctly, they were looking to sell that
2 property as soon as they could all the way along,
3 correct, sir?

4 THE WITNESS: No.

5 ALJ STERN: No, you didn't want to sell it in
6 2010?

7 THE WITNESS: In 2010?

8 ALJ STERN: Yeah, or 2009?

9 THE WITNESS: Well, once we took it over, I
10 explained earlier that the real estate market was such,
11 the bad decision that was made by the group was that we
12 were going to move on with the thing. Okay. I get it,
13 I'm sorry.

14 We would have sold it if somebody came to us and
15 made us an offer that we wanted, yes. We did not list
16 the property for sale.

17 ALJ STERN: Because the real estate market was
18 deflated?

19 THE WITNESS: We didn't see a point in it, so we
20 decided in the meantime to move on and try to make the
21 project be viable.

22 ALJ STERN: Okay. Go ahead.

23 THE WITNESS: If I can, one other thing. It was
24 our belief that once we got to tentative plat, that that
25 by itself would have made all of it more valuable, which

1 was really not what happened.

2 ALJ STERN: It didn't matter?

3 THE WITNESS: No.

4 ALJ STERN: Okay. Go ahead, Mr. Schulman.

5 BY MR. SCHULMAN:

6 Q. Well, it turned out that the situation that
7 you're in today, none of this mattered, correct?

8 A. None of what matters?

9 Q. None of what has transpired to date with respect
10 to the project has mattered in the sense of whether this
11 project has been a success or failure?

12 MR. MILLECAM: Objection, calls for speculation
13 and is vague.

14 THE WITNESS: You need to reword that. I'm
15 having trouble understanding that question. It's a
16 little -- too many parts to it.

17 BY MR. SCHULMAN:

18 Q. Well, let me rephrase. What could have been done
19 differently, in your opinion, so that this project would
20 have been a success for you and the other investors?

21 MR. MILLECAM: Again, objection. Calls for
22 speculation.

23 MR. SCHULMAN: Well, Your Honor, he has been
24 allowed to speculate all day. I don't understand why he
25 can't speculate one more time.

1 ALJ STERN: I'll overrule the objection and let
2 him answer the question, if you can. I'm not sure he
3 even knows the answer. Can you answer that question?

4 THE WITNESS: Try me one more time with the
5 question, and I'll see what I can do.

6 MR. SCHULMAN: Can you reread the question?

7 (The record was read by the Certified Reporter
8 as requested.)

9 THE WITNESS: Wow. Let's see, starting with
10 the -- well, the money, every cent that our investors
11 gave to Parker Skylar could have ended up in Cochise
12 County so that we weren't having to pay \$200,000 towards
13 tentative plat. That would have made it more
14 successful. And we wouldn't have had to make annual
15 payments, and those things alone, we at least would have
16 been successful, quote, unquote, by having ownership of
17 the land at this point that, if we wanted to, we could
18 just sit on.

19 So other than that, I'm not a developer, and I
20 couldn't speculate and try and hypothesize about what
21 Pat Shudak or Alan Thome could have done to make it more
22 successful.

23 BY MR. SCHULMAN:

24 Q. I don't understand the connection between the
25 money, your claim that if more money had gone into Cochise

1 County that you would not have had to make these
2 additional annual payments? How is that connected?

3 A. If the money was in the account, the account
4 would have made the payments.

5 Q. How do you know --

6 A. That was my understanding of how it was supposed
7 to work.

8 Q. And that understanding was based on what?

9 A. Paperwork or what I understood. You know, it
10 could be wrong. Maybe we had to make the annual
11 payments anyway and maybe I'm wrong about that phase of
12 it. So --

13 MR. SCHULMAN: I have no further questions, Your
14 Honor.

15 ALJ STERN: Okay, Mr. Millecam, anything else?

16 MR. MILLECAM: No, Your Honor. Thank you.

17 ALJ STERN: Thank you, sir. You're excused.

18 THE WITNESS: Thank you.

19 ALJ STERN: Let's take a few minute recess, and
20 we'll come back about 20 till 4:00. Then we'll see
21 where we're at for tomorrow.

22 (Recessed from 3:30 p.m. to 3:44 p.m.)

23 ALJ STERN: We're back on the record. We're
24 going to go with a witness tomorrow, right?

25 MR. MILLECAM: Yes.

1 ALJ STERN: About 9:30, how's that?

2 MR. MILLECAM: At 9:30 we'll have a witness
3 coming telephonically, an investor. After him will be
4 another investor. If we get through those, we will also
5 have two people from the Division.

6 ALJ STERN: Where are the witnesses calling in
7 from?

8 MR. MILLECAM: One is from Iowa; one is from
9 Nebraska -- excuse me, Minnesota.

10 ALJ STERN: Okay. I assume Mr. Schulman knows
11 who is calling us tomorrow.

12 MR. SCHULMAN: Yes, Mr. Millecam was kind enough
13 to tell me what the rest of the schedule is.

14 ALJ STERN: So we'll see you about 9:30 tomorrow
15 morning and your next witness, and I guess that's it for
16 now. Anything else?

17 MR. MILLECAM: No, Your Honor.

18 ALJ STERN: Okay.

19 MR. SCHULMAN: Thank you, Your Honor.

20 MR. MILLECAM: Thank you.

21 (The proceedings recessed at 3:45 p.m.)

22

23

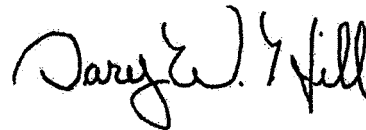
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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.

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5
6
7 I, GARY W. HILL, Certified Reporter No. 50812
8 for the State of Arizona, do hereby certify that the
9 foregoing printed pages constitute a full, true and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.

13
14 WITNESS my hand this 1st day of July, 2013.

15
16
17
18 

19 GARY W. HILL, RPR, CRR
20 Certified Reporter
21 Certificate No. 50812
22
23
24
25

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF:

4 PATRICK LEONARD SHUDAK, a single man;

5 PROMISE LAND PROPERTIES, LLC, an
6 Arizona limited liability company; and

7 PARKER SKYLAR & ASSOCIATES, LLC, an
8 Arizona limited liability company.

Respondents.

)
)
) DOCKET NO.
) S-20859A-12-0413
)
) EVIDENTIARY
) HEARING
)
)
)

9

10

11 At: Phoenix, Arizona

12 Date: June 18, 2013

13 Filed: July 8, 2013

14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 VOLUME II

17 (Pages 186 through 351, inclusive.)

18

19

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2200 North Central Avenue
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23 Prepared for:

By: KAREN L. KESSLER, RPR
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24

25

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 9:33 a.m., on the 18th of June,
6 2013.

7

8

BEFORE: MARC E. STERN, Administrative Law Judge

9

10 APPEARANCES:

11

For the Arizona Corporation Commission Staff:

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Staff Attorney, Legal Division
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KAREN L. KESSLER, RPR
Certified Reporter
Certificate No. 50821

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25

1 ALJ STERN: This proceeding is reopened and
2 reconvened in the matter of Patrick Shudak in Docket No.
3 S-20859A-12-0413.

4 My name is Marc Stern. I'll preside today.

5 And we'll take appearances on behalf of the
6 Securities Division.

7 MR. MILLECAM: Ryan Millecam, attorney for the
8 Securities Division.

9 ALJ STERN: And on behalf of the respondent,
10 Mr. Shudak?

11 MR. SCHULMAN: Good morning, Your Honor. Brian
12 Schulman on behalf of Mr. Shudak.

13 ALJ STERN: Okay. I believe the ball is in your
14 court again, Mr. Millecam. Who's your witness today?

15 MR. MILLECAM: The Division would like to call
16 Craig Swandal.

17 ALJ STERN: Craig -- what's his last name?

18 MR. MILLECAM: Craig Swandal, S-W-A-N-D-A-L.

19 ALJ STERN: All right. Mr. Swandal, you're on
20 the phone, right?

21 MR. SWANDAL: Yes, I am.

22 ALJ STERN: Okay. Do you hear us okay?

23 MR. SWANDAL: Yes. Coming in very clear.

24 Do I sound all right?

25 ALJ STERN: Yes, you do, I think.

1 Anybody have any problems hearing Mr. Swandal?

2 I think you're okay. Okay.

3 The court reporter will have to swear you in by
4 telephone, Mr. Swandal. So bear with us, and the next
5 voice you hear will be the court reporter's.

6 (Craig Swandal was duly sworn by the Certified
7 Reporter.)

8 ALJ STERN: Mr. Millicam, you can proceed.

9

10 CRAIG ALAN SWANDAL,

11 Called as a witness on behalf of Staff, having been
12 previously sworn by the Certified Reporter to speak the
13 truth and nothing but the truth, was examined and
14 testified as follows:

15

16 DIRECT EXAMINATION

17 BY MR. MILLECAM:

18 Q. To start off, can you please state your full
19 name for the record?

20 A. Craig Alan Swandal.

21 Q. Mr. Swandal, where do you currently reside?

22 A. In Buffalo, Minnesota.

23 Q. And how long have you resided there?

24 A. 26 years, I believe.

25 Q. Can you briefly describe your work history?

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www.az-reporting.com Phoenix, AZ

1 A. I have been in executive management in
2 manufacturing companies for the past about 20 years,
3 primarily high tech computers, aerospace and medical
4 sites. Been part of a sale of three businesses and
5 acquisition of about seven businesses. Currently, I
6 have started a consulting business, consulting companies
7 on executive management strategies.

8 Q. Mr. Swandal, are you familiar with an individual
9 named Patrick Shudak?

10 A. Yes.

11 Q. Can you describe how you met Mr. Shudak?

12 A. I was looking at, we had just sold a company by
13 the name of Gyrus ACMI, and I have --

14 ALJ STERN: Excuse me.

15 Did you get that?

16 THE REPORTER: No.

17 ALJ STERN: The court reporter didn't get that
18 and I didn't get it either, so speak up a little bit
19 into your phone, please.

20 What company is that?

21 THE WITNESS: Gyrus ACMI.

22 ALJ STERN: What's that first name?

23 THE WITNESS: Gyrus, G-Y-R-U-S.

24 ALJ STERN: ACMI?

25 THE WITNESS: Yes.

1 ALJ STERN: Okay. Go ahead, Mr. Millecam.

2 BY MR. MILLECAM:

3 Q. The question was how did you meet Mr. Shudak.
4 Can you please continue with your answer?

5 A. So a friend of mine in Arizona, who is in real
6 estate, by the name of Jim Peterson had done some real
7 estate deals, sold some property to Shudak, and then
8 eventually, as I recently found out, had a listing on
9 the 1900 property, but Pat had solicited Jim to look for
10 investors in the -- actually at the time it was the
11 ranch project that they were primarily pushing.

12 And so I arranged a meeting with Jim to come
13 down to Arizona and go visit the Tombstone property,
14 which, or otherwise known as the ranch, in, it was early
15 March of 2008. And so Jim and Pat picked me up at the
16 airport and I spent the day with them in the, basically,
17 at the ranch property in Tucson and in Sierra Vista.

18 Q. Did you have any relationship with Pat Shudak
19 before you met him that day?

20 A. No.

21 Q. Did Mr. Shudak ever describe an investment
22 opportunity in approximately 1900 acres of land in
23 Cochise County to you?

24 A. Yes, he did.

25 Q. And how did he describe that project?

1 A. Again, we were going down to visit the ranch
2 property.

3 ALJ STERN: Excuse me. Just -- sorry to
4 interrupt, Mr. Swandal. This is Judge Stern. You're
5 talking about the ranch. Now, is the ranch the 1900,
6 whatever it's called --

7 THE WITNESS: No.

8 ALJ STERN: That's a different property
9 altogether, right?

10 THE WITNESS: Yes, it is, and so the, I guess
11 the long answer was is I spent the day looking at the
12 ranch property, and on the way back to Phoenix he
13 explained the 1900 property in Bisbee. There wasn't a
14 lot of documentation. He had given me a ton of
15 documentation on the ranch, including an executive
16 summary and a table on how much money I was going to
17 make, and then started talking about the 1900 property;
18 that it was in the early stages, that it was the type of
19 property that was going to sell quicker because of the
20 Border Patrol station that was being planned in Naco and
21 a couple of copper mining operations that were planning
22 on moving in there.

23 And so that basically is when he told me about
24 the Bisbee property, or the 1900 property. But there
25 was not a lot of documentation on it at the time.

1 BY MR. MILLECAM:

2 Q. Mr. Swandal, this is Ryan again.

3 Just to be clear, the he in those sentences, the
4 he that was doing the describing, who was that?

5 A. Pat Shudak.

6 Q. Did he describe what your, a potential role for
7 you in this project?

8 A. Yes. Primarily he had spoke of being a lender
9 of, to lend money to the project, primarily to bring the
10 project to plat, and gave me tons of information on both
11 properties, on what type of work was going to go into,
12 what my money was going to be used for, which was
13 specifically, as he stated many times, for the, to take
14 the property to tentative plat, and that it basically
15 would be a loan, a two year loan, at 14 percent
16 interest, that he assumed we would never get to the two
17 years, that they needed hard money lenders to get to
18 plat. He was figuring that could be done in a year,
19 actually, on both properties, and that in the end I'd
20 get my 14 percent back, and then set the Falbe
21 percentages in the property. And, again, he gave me
22 scenarios on the ranch of what I could see as ownership
23 in that property, and similarly, what, it would be
24 similar on the 1900 property.

25 Q. What was Mr. Shudak's role in this enterprise?

1 MR. SCHULMAN: Objection, Your Honor.
2 Foundation.

3 ALJ STERN: Sustained. Go ahead.
4 BY MR. MILLECAM:

5 Q. What was your understanding of Mr. Shudak's role
6 in this enterprise?

7 A. That he was bringing investors, investment
8 monies into the project to help bring the property to
9 plat and that he would be helping with the marketing of
10 the properties, since that was his background, was
11 marketing.

12 Q. Did Mr. Shudak ever describe to you how this
13 project was going to make money to pay back the
14 investors?

15 A. Yes. Again, I'm going to refer to the ranch
16 property, very good documentation, an executive summary
17 that I still have that Mr. Shudak prepared, and it
18 basically showed how many lots were going to be sold,
19 what the prices would be, and what the return would be
20 on the investment. And, again, said on the 1900 it
21 would be similar to what we were looking at in the ranch
22 project in Tombstone.

23 Q. Mr. Swandal, did you end up investing in this,
24 in this project?

25 ALJ STERN: Which project?

1 MR. MILLECAM: In the 1900 investor, Cochise
2 County 1900 project, the 1900 acres.

3 THE WITNESS: Yes. On the same date I invested
4 200,000 in the ranch project in Tombstone and 300,000 in
5 the 1900 project in Bisbee.

6 BY MR. MILLECAM:

7 Q. With which entity did you enter that investment?

8 A. For the Bisbee property, Parker Skylar &
9 Associates.

10 Q. Mr. Swandal, you received documents in return
11 for your investment; is that correct?

12 A. Yes, I did.

13 Q. The Division has provided you with what we have
14 marked as S-31; is that correct?

15 A. Yes.

16 Q. Since you're appearing telephonically, take a
17 second to make sure you have the same document in front
18 of you as we have.

19 A. Yes, I do.

20 Q. Okay. S-31, you see at the bottom there's some
21 numbers there, ACC numbers, 00 then the beginning page
22 is 6093. The second page of Exhibit 31 in front of you,
23 is that titled Investment Purchase Agreement?

24 A. Yes.

25 Q. You recognize this as the document you received

1 with your investment in Parker Skylar?

2 A. Yes, it is.

3 Q. If you flip through a few pages to ACC6097, do
4 you recognize a document entitled Note?

5 A. Yes.

6 Q. Okay. These investment documents, am I correct
7 in saying they show that you invested 300,000 in Parker
8 Skylar & Associates?

9 A. Yes, it does.

10 Q. And you did, in fact, pay that 300,000 to Parker
11 Skylar?

12 A. Not directly.

13 Q. Can you describe how you -- oh, excuse me. Go
14 ahead.

15 A. I, this is an unfortunate mistake I made, but
16 Pat was in a very big hurry to get money into the
17 property, that we needed money to start development.
18 And I said I needed my attorney to look at it.
19 Unfortunately, he was out of the country for about ten
20 days, and Pat asked if I would talk to an Arizona real
21 estate lawyer who he thought it would be better for me
22 to talk to since he knew Arizona real estate. And so he
23 gave me the name. And I called this gentleman, his name
24 was Dan Curtis, up, and decided to utilize him.

25 Unfortunately, I found out later that he had

1 done a lot of work with Pat. I thought it was a little
2 bit more independent than that, but in that process, Dan
3 Curtis assured me that sending money through him would
4 give me better traceability of the monies into the
5 property. So I sent my money to Dan Curtis. And Dan
6 made the, sent the monies to Pat, and unfortunately was
7 not very, Dan Curtis was not very cooperative when this
8 all, all the problems started coming up with this
9 investment, that he was no help in providing details of
10 how that money went into those properties. But we were
11 able to retrieve that through proper wire transfer
12 information.

13 Q. Can you describe how you expected your money to
14 be used after it was transferred?

15 A. I was told and was given documents. I got back
16 on the plane the next day from visiting down there with
17 a lot of documents on what it takes to bring a property
18 to plat. So it was always, the focus was on all the
19 engineering work that would begin and dirt work that
20 would be required to bring the property to plat.

21 Q. Did you ever give Mr. Shudak or Parker Skylar
22 permission to use your funds for any other purpose?

23 A. No.

24 Q. As you reviewed these documents and spoke with
25 Mr. Shudak, did you ever discuss if Mr. Shudak was going

1 to receive a salary for his work in Parker Skylar?

2 A. No. He was -- I believe I asked him the
3 question, but I know that we got into the discussion
4 that he was pretty much self-made in his Neiman Marcus
5 business and all the money he was going to receive out
6 of this was on the back end. And based on the, again,
7 the tables he gave me of what my percentage in the
8 business would be, it was very, very impressive of what
9 he would be making on the back end of this. And he
10 always talked about his retiring rich plan.

11 Q. Can you just explain a little bit about what you
12 mean when you say on the back end?

13 A. That basically as the development started
14 clearing all the expenses in the development and started
15 making a profit, that those profits would be shared by
16 the members of 1900. And the documents that he gave me
17 with the investment documents that we're talking about
18 showed Pat as a 91 percent owner in Parker Skylar and me
19 as a 9 percent owner.

20 So at that time all I knew is he had a large
21 chunk of this property and he was going to make a ton of
22 money on the backside when we started selling lots.

23 Q. Was Mr. Shudak going to invest any of his own
24 cash into Parker Skylar?

25 MR. SCHULMAN: Objection, Your Honor.

1 Foundation.

2 MR. MILLECAM: I'll ask a different question.

3 BY MR. MILLECAM:

4 Q. Did Mr. Shudak ever explain or represent to you
5 that he was going to invest any of his own cash into
6 Parker Skylar?

7 A. No. I had actually asked through the process
8 of, if he was an investor and if, it was actually a
9 concern of mine going into this, that I guess I ignored,
10 that he wasn't invested in it.

11 Q. Did you ever discuss whether Mr. Shudak was
12 going to make any loans to Parker Skylar?

13 A. I don't recall discussing that, no.

14 Q. Did you discuss whether any of Mr. Shudak's
15 related entities were going to make loans to Parker
16 Skylar?

17 A. No.

18 Q. Did Mr. Shudak discuss with you the risks of
19 this type of investment prior to investing?

20 A. Pretty much the risks -- he never described any.
21 All the risks were stated in the investment documents
22 that he gave me.

23 Q. Did he himself describe any risks related to the
24 investment?

25 A. No.

1 Q. Did he discuss any lawsuits that he himself
2 might have been involved in?

3 A. No.

4 Q. Can you describe what your real estate
5 investment experience was prior to investing in Parker
6 Skylar?

7 A. I had a few raw land purchases that I had done
8 prior to this and continue to own, but that was it. I
9 never invested in a development project.

10 Q. When you invested, did you expect to participate
11 in the management of Parker Skylar?

12 A. No.

13 Q. Did you expect to participate in the management
14 of the development?

15 A. No.

16 Q. Did Mr. Shudak or Parker Skylar ever provide you
17 with lists of other members of Parker Skylar?

18 A. On request he never did.

19 Q. So you did request a list of members from
20 Mr. Shudak?

21 A. Many, many times.

22 Q. Did you, did Mr. Shudak ever provide you with
23 financial statements for Parker Skylar?

24 A. I requested them multiple times from the time,
25 probably six months after I invested, up until he

1 started calling me when we were in default on the ranch
2 property.

3 I did receive a very crude spreadsheet from him
4 at that time -- this was in the fall, late fall of 2009
5 -- on the ranch property that I could make no sense of.
6 And I requested very specific information that were
7 outlined in my investment documents, that he owed every
8 member on at least an annual basis. I never received
9 them.

10 ALJ STERN: Mr. Swandal, are you talking about
11 that property you referred to earlier, the ranch, or are
12 you talking about the 1900?

13 THE WITNESS: 1900.

14 ALJ STERN: Okay. So you don't mean the ranch.
15 You mean the default on the 1900 project. Is that what
16 you're --

17 THE WITNESS: Oh, I'm sorry. Yes, the, the
18 default happened on the ranch property.

19 ALJ STERN: On the ranch or on the 1900
20 property?

21 THE WITNESS: On the ranch property. That is
22 how I first found out that there were problems with both
23 investments.

24 ALJ STERN: So the ranch --

25 THE WITNESS: Pat called me --

1 ALJ STERN: The ranch property was that first
2 one you got all the data on, and you invested in that,
3 you said earlier. But that went into default also?

4 THE WITNESS: Yes well, before the 1900
5 property. In November of 2009 is when we were late on
6 payments.

7 ALJ STERN: On which property?

8 THE WITNESS: On the ranch property.

9 ALJ STERN: Do you know that the ranch property
10 is not involved in this proceeding, unless I'm mistaken?

11 THE WITNESS: Yes. But I was asked if I had
12 ever received financial documents, so I -- no, I have
13 never, I never received financial documents from Pat on
14 the 1900 property.

15 ALJ STERN: Okay. Go ahead, Mr. Millecam.

16 BY MR. MILLECAM:

17 Q. Mr. Swandal, just to be clear, when you answered
18 the previous questions, you were answering them with
19 relation to your investment in Parker Skylar?

20 A. Yes.

21 Q. Okay. Those would be questions about Mr. Shudak
22 receiving a salary, whether Mr. Shudak was going to
23 invest. You understood that I was asking questions
24 related to Parker Skylar, not your other investment with
25 Mr. Shudak; is that correct?

1 A. Yes, I did. And going forward I'll try and stay
2 away from the ranch project. It's hard for me because
3 both investments happened at the exact same time, they
4 were both managed by Pat on the finance side, and
5 managed by Alan Thome on the development side.

6 So it's -- I'll try as much as I can to keep it
7 on Parker Skylar and the 1900 property from here going
8 forward.

9 Q. Let me reask the last question then.

10 Did you receive any financial statements
11 regarding your Parker Skylar investments?

12 A. No, I did not.

13 Q. Mr. Swandal, we talked about a note you received
14 and the interest you were expecting to receive on that.

15 According to these documents, you also received
16 a membership interest in Parker Skylar; is that correct?

17 A. Yes, I did.

18 Q. What did your membership interest entitle you
19 to?

20 A. A 9 percent ownership in Parker Skylar.

21 Q. This was in addition to the payments on the
22 note?

23 A. Yes, it was.

24 Q. Okay. Now, as a member of Parker Skylar, did
25 you ever participate in any member meetings?

1 A. No.

2 Q. Did you, as members, ever pass any resolutions
3 for Parker Skylar?

4 A. No.

5 Q. Did you, as a member of Parker Skylar, ever
6 approve any Parker Skylar decisions?

7 A. No.

8 Q. Mr. Swandal, have you ever received a return of
9 your principal or interest payments on this investment?

10 A. No, I have not.

11 Q. Okay. Mr. Swandal, could you just briefly
12 describe your understanding of the relationship of
13 Parker Skylar to Cochise County 1900?

14 A. My understanding is that Parker Skylar was the,
15 I guess the money side of the partnership, that it owned
16 50 percent and that it was responsible for bringing
17 funds to bring the properties to plat, the property to
18 plat.

19 Q. Okay. Just give me one moment to review my
20 questions, see if I have any further questions.

21 Okay. Mr. Swandal, at this point I have no
22 further questions for you.

23 A. Okay.

24 ALJ STERN: Okay. There is another attorney
25 here, Mr. Schulman, he is going to ask some questions of

1 you. He's the attorney for Mr. Shudak.

2 Go ahead, Mr. Schulman.

3 MR. SCHULMAN: Your Honor, before I get up to
4 the podium, I just need to confirm with the Division
5 that Mr. Swandal has all, has a full set of the
6 exhibits. Is that true?

7 MR. MILLECAM: I'm sorry. Can you ask that
8 again, Brian? I'm sorry.

9 MR. SCHULMAN: Sure. Does Mr. Swandal have a
10 full set of the exhibits?

11 MR. MILLECAM: In this hearing?

12 MR. SCHULMAN: Yes.

13 MR. MILLECAM: No. I provided him with his
14 investment documents that we just looked at. And then,
15 Mr. Schulman, you provided me with what has been
16 admitted as R-1. I sent that to Mr. Swandal as well.

17 MR. SCHULMAN: What about -- he does not have
18 Exhibit S-13, which is his documents that you guys have
19 identified as e-mails from him?

20 MR. MILLECAM: S-13?

21 MR. SCHULMAN: Yes.

22 MR. MILLECAM: Let's see. I believe when we
23 provided his documents, we decided not to send that one
24 to him.

25 MR. SCHULMAN: Your Honor, I didn't have

1 objections to witnesses appearing telephonically, but I
2 fully assumed they were going to have a full set of the
3 exhibits so that I wasn't bound by whatever documents
4 the Division decided to send to the witnesses.

5 And this is going to be an issue with the other
6 witness as well, potentially.

7 ALJ STERN: How are you going to handle that,
8 Mr. Millecam? You didn't send him some of the exhibits
9 which relate --

10 MR. MILLECAM: Our practice is to send, to
11 provide the witnesses with the documents they'll be
12 testifying on. When we made the determination of what
13 his testimony was going to be about, we provided him
14 with those documents. We did not provide him with all
15 of them because he was not going to be providing
16 relevant testimony.

17 ALJ STERN: But documents -- this apparently
18 involves this witness.

19 So now, do you want to cross-examine this
20 witness relevant to Exhibit S-13?

21 MR. SCHULMAN: Yes. I have a whole set of
22 questions to ask him about on S-13.

23 ALJ STERN: I have never had this come up, but I
24 would assume that since Mr. Swandal is testifying as a
25 witness and these documents, just a cursory, looking at

1 them, I see Mr. Swandal's name appearing throughout
2 them.

3 So I don't know what to do, other than to say,
4 well, if you want to cross-examine this witness, he's
5 going to have to come back another time after these
6 documents are sent to him.

7 MR. MILLECAM: Two things, Your Honor.

8 First, we excluded S-13 because it relates to
9 Promise Land. We just heard Mr. Swandal talk about two
10 investments he was involved with. Promise Land is
11 another investment. They are listed as a party. They
12 were the party that will be defaulted. We decided that
13 because they will be defaulted the focus of this hearing
14 will be on Parker Skylar.

15 Moreover, we submitted our request to have him
16 be a telephonic witness weeks ago. Mr. Schulman
17 received that. Mr. Schulman could have told us what to
18 send. Mr. Schulman did, in fact, ask that we send
19 what's been marked as R-1, and we sent it to Mr.
20 Swandal.

21 MR. SCHULMAN: Okay. Wait a minute, Your Honor.
22 First of all, there are references in S-13 to the Bisbee
23 property, so what Mr. Millecum is saying is just not
24 accurate.

25 ALJ STERN: Is there references in S-13 to the

1 1900 project?

2 MR. SCHULMAN: Yes, there are, number one.

3 Number two, Your Honor, your office called me
4 when you received the motion for the witnesses to appear
5 telephonically. At the point, at that point, the motion
6 had just shown up on my computer and I saw who the
7 witnesses were, and I realized it was the 11th hour.
8 And so your office called and said are you planning on
9 filing an objection, and I said I don't have any
10 objection to any witnesses appearing telephonically.

11 Number three, I did ask the Division to forward
12 to any of their telephonic witnesses a document that was
13 going to be a respondent exhibit, because I didn't
14 expect them to have the responsibility of forwarding my
15 exhibits to the witnesses. But I did fully expect that
16 they would have a full set of the exhibits provided to
17 the witnesses who were going to appear telephonically.

18 ALJ STERN: Okay. Here's what's going to happen
19 here. Mr. Swandal -- you can either proceed with your
20 cross-examination now, although I think it would be
21 better in one solid cross-examination. But what I would
22 propose is Mr. Swandal be excused subject to whatever
23 exhibits you want to cross-examine him on being provided
24 to him so you can now cross-examine him on those
25 documents.

1 And I don't know what the time factor is in
2 providing those documents to this individual, but I
3 don't know how else to do it, Mr. Millicam.

4 MR. MILLECAM: Well, again, our position is this
5 is not relevant to the evidence.

6 ALJ STERN: Well, it may not be, but, you
7 know -- I mean, you have a witness. He invested in this
8 project. Mr. Schulman is defending the person who is
9 alleged to have made the offering and sold him this
10 investment. Mr. Schulman is representing that within
11 these documents -- and I haven't looked at them either
12 because you didn't refer to them at all during his
13 direct, but that certainly doesn't preclude Mr. Schulman
14 having some reason to want to question this since you
15 did file and exchange exhibits concerning this offering.

16 And I don't know what else to tell you. I don't
17 know how many references there are to the 1900 property,
18 but I'm looking at ACC006046. It's an e-mail. I don't
19 know where -- it's to Mr. Swandal from someone,
20 somebody. I don't know who that person is up at the top
21 of this, but I see Mr. Swandal's name showing up, and I
22 see on this page a statement: I will be working on a
23 letter to Alan today for the immediate sale of the two
24 pieces of land on the 1900 property.

25 So there it is. It's sitting there. I don't

1 know what it means. I have no clue. I know
2 Mr. Schulman may be referring to another document in
3 this group, in Exhibit S-13, and just looking through,
4 again, I don't know what his questions are, but if I see
5 1900 property, I guess he has a reason to want to ask
6 questions, whether you use the document or not as part
7 of your exhibit set, so...

8 MR. MILLECAM: Judge Stern, if that's your
9 decision --

10 ALJ STERN: I don't know what else to do.

11 MR. MILLECAM: I think e-mail -- if you've
12 decided that this document should be provided, he should
13 be provided with the opportunity to cross-examine a
14 witness that he's known about for weeks. He's had our
15 documents for weeks. He did not make any effort to
16 provide these documents to the witness.

17 ALJ STERN: Excuse me. The man is your witness.
18 I would assume that any document that he's involved
19 with, whether, you know, it's very hard to narrow down
20 which offering here you're talking about. I know you
21 said you're not pursuing Promise Land, but for whatever
22 the reason the property that's involved with Parker
23 Skylar, this 1900 that I have heard about, is referenced
24 in these -- I don't know what else to do.

25 MR. MILLECAM: If that's the decision, I think

1 e-mail would probably be -- we could just e-mail this
2 document to him.

3 Mr. Swandal, are you still on the phone?

4 THE WITNESS: Yes, I am.

5 MR. MILLECAM: Could we just send you an e-mail
6 of a document that Mr. Schulman would like to ask you
7 questions about?

8 THE WITNESS: Yes. I'm sitting right in front
9 of my computer.

10 ALJ STERN: I don't know how the Division
11 proposes to e-mail this to you. So perhaps are we going
12 to need a recess.

13 No, we don't need a recess.

14 MR. MILLECAM: I'm not right in front of my
15 computer, but --

16 Any other documents you want in front of him?

17 MR. SCHULMAN: I would like S-13 and S-56.

18 And then while we're on the topic, Your Honor, I
19 think we should be talking about, if they, if, I don't
20 know what witnesses are in front -- I'm sorry -- I don't
21 know what documents are in front of Mr. Berendes, who's
22 also appearing telephonically, so we should probably try
23 and deal with that at the same break.

24 ALJ STERN: Well, you can discuss that with the
25 Division.

1 How long are we going to need until you e-mail
2 these documents? Do you need 15 minutes?

3 MR. MILLECAM: If that, yes.

4 ALJ STERN: Mr. Schulman, do you want to wait
5 till he gets these documents before you proceed? What's
6 your pleasure?

7 MR. SCHULMAN: I have no -- I will follow your
8 lead, Your Honor. I don't know how long it's going to
9 take for them to get them up. I have other questions I
10 can start with. It's up to you, Your Honor.

11 ALJ STERN: How long is it going to take?

12 MR. MILLECAM: She's going to walk over to her
13 office, e-mail them, and walk back. 15 minutes, I would
14 think, at the top.

15 ALJ STERN: Do you have enough questions you can
16 fill 15 minutes with, or do you want to have them there
17 before we --

18 MR. SCHULMAN: I'll start with my exam, and when
19 I get to the point where I want to ask questions about
20 the e-mails, if they're not there yet we can take a
21 quick recess.

22 ALJ STERN: Okay. Let's just proceed with
23 cross-examination by Mr. Schulman and we'll see what
24 happens.

25 Go ahead, Mr. Schulman.

1 MR. SCHULMAN: Thank you.

2

3 CROSS-EXAMINATION

4 BY MR. SCHULMAN:

5 Q. Good morning, Mr. Swandal. My name is Brian
6 Schulman. I represent Mr. Shudak in this proceeding.

7 A. Good morning.

8 Q. Good morning. I have some questions for you
9 and, that we'll talk about before the exhibits are sent
10 to you. And if you would just do me a favor, when those
11 exhibits do arrive, if you would just let me know while
12 we're doing the exam, that will help me out.

13 A. All right.

14 Q. You testified that you first learned about the
15 investment opportunities in Arizona by an individual
16 named Jim Peterson; is that correct?

17 A. Yes.

18 Q. Describe for me your relationship with
19 Mr. Peterson.

20 A. I have known Jim Peterson since 2000 -- or I'm
21 sorry, 1981. In 1985 he was in my wedding. So we've
22 been very close friends. He lived in Minnesota until
23 about ten years ago, and then moved to the Phoenix area.

24 Q. What is Mr. Peterson's profession, if you know?

25 A. He's a realtor.

1 Q. What did Mr. Peterson tell you about the
2 investment opportunities in Arizona?

3 A. He stated his relationship with Pat, that he had
4 done some real estate deals with him and that he had
5 properties in southern Arizona that looked very
6 attractive and that they were going to be developed,
7 primarily the first ranch, retirement properties in 1900
8 to serve the growing business, businesses in that area.

9 Q. How did the topic of investment, real estate
10 investment opportunities in Arizona come up between you
11 and Mr. Peterson?

12 A. We were looking at investing in some retirement
13 properties in the Texas area, and he knew I had money to
14 invest and said that he wasn't able to invest in Texas
15 property at the time and said that maybe I would be
16 interested in this development project in Arizona.

17 Q. How soon after you had -- well, strike that.

18 Were these, did these conversations with
19 Mr. Peterson take place initially over the phone or were
20 they in person?

21 A. Over the phone.

22 Q. How soon after you had your discussion with
23 Mr. Peterson about potentially investing in Arizona did
24 you take your trip out to Arizona and tour the
25 properties?

1 A. I believe it was about a month. I received the
2 money in about mid-February, and I know I was in Arizona
3 early March of 2009.

4 Q. You -- just to help with a time line, I believe
5 that you testified that you signed the, the investment
6 documents on the same day that you toured the
7 properties; is that correct?

8 A. No.

9 Q. Okay. I misunderstood then.
10 How soon after you toured the properties did you
11 decide to make your investment?

12 A. It was two to three weeks before I made the
13 investment.

14 Q. Did you receive any information about -- we'll
15 again try to focus on the Bisbee property, the 1900
16 property -- what information concerning the Bisbee
17 property did you receive before you made your trip to
18 Arizona to tour the property?

19 A. Very little. I believe I received some
20 blueprints of what the proposed development would look
21 like.

22 Q. Who sent that information to you?

23 A. Pat had it with him on our trip down to Sierra
24 Vista, and I recall bringing it back on the airplane.

25 Q. And again, I didn't ask the perfect question.

1 Let me try to rephrase it.

2 Before you took your trip to Arizona, what
3 information did you have about the 1900 property?

4 A. Nothing, that I recall.

5 Q. Okay. So you -- who, who picked you up at the
6 airport when you make your trip to Arizona?

7 A. Jim Peterson and Pat Shudak.

8 Q. And then the three of you drive down to southern
9 Arizona?

10 A. Yes.

11 Q. You said that the primary purpose of the visit
12 was to actually look at the Tombstone property, but you
13 did drive through the Bisbee property on your way back
14 up?

15 A. No, we didn't.

16 Q. You did not drive through the Bisbee property at
17 all?

18 A. We -- I actually can't recall. We drove into
19 Sierra Vista from Tombstone, and I think, given time, we
20 bypassed the Bisbee property.

21 Q. On your trip to Arizona, tell me everything you
22 recall that Mr. Shudak said to you about the 1900
23 property.

24 A. Before I start, I'll let you know I did receive
25 documents from Karen.

1 Q. Thank you.

2 A. There weren't a lot of specifics about the 1900
3 property. I was told that, as opposed to the ranch
4 project, the Bisbee project was geared more to working
5 class people and, given the Border Patrol station and
6 potential copper mine, mining in the area. And he gave
7 me examples of when the copper mine boom happened before
8 in southern Arizona, what a housing shortage it was.
9 And so it was mainly painting the picture of what would
10 be a potential huge demand for more reasonably priced
11 lots in the 1900 project.

12 Q. Anything else that you recall Mr. Shudak saying
13 to you about the 1900 property during your visit in
14 Arizona?

15 A. He did a lot of comparison. The contrast was
16 that it would be more reasonably priced lots. The
17 commonality was that it was going to be developed with
18 the same people, different entity, Parker Skylar and
19 Poncho Holdings. So Alan Thome, who he spent a lot of
20 time introducing me to through documents in the ranch
21 project, he said Alan is going to be the one developing
22 it, and it's very likely that we might switch our
23 energies towards the Bisbee property off of the ranch
24 property, because we want to make sure that we get it
25 done in time to, to -- the lots were available early

1 when copper mining came in and when the border patrol
2 station was hiring people.

3 Q. Was it -- when did you first learn about
4 Mr. Thome's role in the development of the 1900
5 property?

6 A. Jim Peterson had met Alan Thome and, basically,
7 gave me a, he, he vouched for him and thought he was a
8 good developer, but had no business relationship with
9 Alan, only that he had met him and thought he was a good
10 guy and knew what he was doing.

11 Q. Would you have made your investment in the 1900
12 property if Mr. Peterson hadn't recommended the
13 investment to you?

14 A. I wouldn't have been aware of it.

15 Q. Well, after you were made aware of it, would you
16 have invested in the property if Mr. Peterson hadn't
17 recommended it to you?

18 A. I had some concerns. I think between Jim
19 Peterson and the lawyer that Pat had turned me on to,
20 Dan Curtis, both of them said that the raw land on both
21 projects -- Parker Skylar had just had an appraisal of
22 the property and it was worth, the raw land was worth
23 \$8 million, so couldn't go wrong. Jim thought that even
24 though the market was declining at the time that it was
25 going to come back, and that all indicators were, the

1 Asian population and with the ranch project and the
2 Border Patrol station and the mining coming in, were
3 going to be boons for both of the these projects. But
4 if it didn't work out, the land itself was going to be
5 worth a lot and be able to be sold. And Dan Curtis
6 assured me I would be first in line to receive my money
7 back if the investment failed, or the development failed
8 and we sold the land instead.

9 Q. Okay. That was Mr. Curtis' representation to
10 you and not Mr. Shudak's, correct?

11 A. Yes.

12 Q. And Mr. Peterson was the one that represented to
13 you that he had observed the market was already in
14 decline at the time?

15 A. Yes.

16 Q. What information did you review between your
17 visit to Arizona and the time that you -- well, strike
18 that.

19 How did you leave it with Mr. Shudak and
20 Mr. Peterson after you left Arizona, after you toured
21 the property, or I guess toured the Tombstone property?

22 A. I stated to both of them that I was interested
23 in both properties but that I needed additional
24 documentation, and I needed to talk to my attorney, and
25 I needed to look over all the documentation that I had

1 requested, which Mr. Shudak assured me was all the
2 detail would be in the investment agreements and the
3 operating agreements with Parker Skylar and with Cochise
4 County, or Poncho Holdings.

5 Q. After you left Arizona, what documents were
6 provided to you about, let's stay focused on the 1900
7 property?

8 A. All I remember was getting on the plane with a
9 lot of documentation, which the majority of it was ranch
10 property, and I honestly can't sort out what was
11 provided me on the Bisbee property.

12 Q. As you sit here today, you don't have any memory
13 about what written information was provided to you about
14 the 1900 property before you decided to make your
15 investment?

16 A. No. That was before I got on the plane. Before
17 I made the investment I received investment documents
18 that I have in front of me, I forget what exhibit it is,
19 that Ryan provided, as well as an operating agreement
20 with Poncho Holdings and Cochise County.

21 Q. What document are you looking at that you're
22 referring to that you said Mr. Millecam sent to you?

23 A. My -- what is this? Document No. S-31, the
24 investment purchase agreement and the note.

25 Q. Okay. So I have got that.

1 What other documents did you review on the 1900
2 property before you invested?

3 A. Operating agreement with Poncho Holdings and
4 Cochise County.

5 Q. Anything else?

6 A. Not that I recall.

7 Q. Did you talk to your attorney before you made
8 your investment?

9 A. Unfortunately, no. I talked with Dan Curtis who
10 was my represented attorney.

11 Q. Why did you decide to go ahead and make your
12 investment without waiting to talk to your attorney?

13 A. Because I was being pressured by Pat Shudak to
14 get money to him so that we could move the development
15 along.

16 Q. Well, sir, when you say pressured by Mr. Shudak,
17 you had no obligation to pay the money towards the
18 project at any time in particular and not to invest at
19 all, correct?

20 A. Correct. But I was being called every day by
21 Pat asking when I was going to get my money to him.

22 Q. So other than looking at the investment docs
23 themselves and the operating agreements for Poncho
24 Holdings and Cochise County 1900, you didn't review any
25 other documents before making your \$300,000 investment

1 in the 1900 property?

2 A. I was continually assured by Pat that if I
3 looked at all my documents on the ranch project, they
4 would be very similar for the 1900 project.

5 Q. That wasn't my question, sir. My question was,
6 other than looking at the investment documents and the
7 operating agreement for Poncho Holdings and Cochise
8 County 1900, you didn't look at any other documents on
9 the 1900 project before making your investment, correct?

10 A. Correct.

11 Q. What independent due diligence did you do on
12 your investment before deciding to make your investment?

13 A. Other than pouring through the documents and
14 coming up with a few questions for Mr. Shudak, I didn't
15 do a lot more. Unfortunately, we had just sold our
16 business to Olympus Corporation and I had, was in the
17 midst of flying all over the world to Germany, England,
18 Japan, during that period of time, so I didn't have a
19 lot of time to, unfortunately didn't have a lot of time
20 to do the diligence that I should have.

21 Q. In retrospect, what diligence would you have
22 done if you had the time to do it?

23 A. Probably would have looked, researched a bit
24 more into what the, the market environment was in
25 Arizona. That's one. Maybe looked into, scrutinized

1 the documents that Pat had sent me, looked into his
2 background and Alan's background a little bit more. I
3 pretty much trusted him on everything that he gave me.

4 Q. You were also relying upon the advice of your
5 long time friend, Mr. Peterson, as well, correct?

6 A. Yes.

7 Q. Did you speak to Mr. Thome before you made your
8 investment in the 1900 project?

9 A. No.

10 Q. You understood that Mr. Thome would be the
11 person responsible for the actual real estate work on
12 the project?

13 A. Yes, I did.

14 Q. Did you look into Mr. Thome's background before
15 you made the investment?

16 A. Pat, in his -- can I talk about the ranch again?
17 I got an executive summary from Pat and it had a very
18 long write-up on all of the investments, all the
19 development work that Mr. Thome had done, including
20 developments that were much, much larger than what we
21 were doing. One that was, I think, 6,000 acres, and one
22 was 3,000 acres; very large investments. And he had 20
23 some plus years in development.

24 Q. Can you, let's look at some exhibits now. I
25 just have three. So let's start with Exhibit S-31,

1 which is what Mr. Millecam was showing you before, your
2 investment documents.

3 Do you have that in front of you?

4 A. Okay.

5 Q. Let's go to -- I'll use the Bates numbers, as
6 Mr. Millecam did before. If you could turn to ACC6100,
7 which I think is second to last page.

8 ALJ STERN: What exhibit are you in again?

9 MR. SCHULMAN: I'm sorry, Your Honor. We're on
10 Exhibit S-31.

11 THE WITNESS: Okay. I think I'm --

12 BY MR. SCHULMAN:

13 Q. You should have in front of you a page that has
14 the caption Additional Terms and Conditions; is that
15 correct?

16 A. Let me -- yes.

17 Q. And you understood that these additional terms
18 and conditions in paragraph 1 you're making certain
19 representations and warranties to the company?

20 A. Yes.

21 Q. Okay. And in paragraph 1(a), you understood
22 that you were representing to the company that you
23 received and carefully reviewed the information provided
24 to you in writing by the company, about the company, its
25 proposed real estate development business, its financial

1 plans, and the securities, and have, that you relied
2 solely on the information contained and referred to
3 therein; isn't that correct?

4 A. Yes. I had my attorney review it, and asked him
5 if there were any flags that I should be worried about,
6 and he said no, so I did not go line by line through and
7 question everything. I relied on my attorney. He
8 reviewed the documents for me before I signed them.

9 Q. And so towards the end of paragraph (a) you have
10 represented correctly that you or your advisers made
11 such investigation of the facts and circumstances set
12 forth in the disclosure in connection with the purchase
13 of the units as you deemed necessary, correct?

14 A. What section is that?

15 Q. That's in paragraph 1(a), towards the end of the
16 paragraph. I believe it's the second to last sentence.

17 A. Yes.

18 Q. You also represented in, to the company that no
19 representations were made or information furnished to
20 you or your advisors relating to the company, its
21 business or the units which were in any way inconsistent
22 with the disclosures you were provided, correct?

23 A. And what are you referring?

24 Q. The last sentence in paragraph 1(a).

25 A. Yes.

1 Q. And paragraph 1(c) you represent to the company
2 that you carefully reviewed all the disclosure furnished
3 to you by the company and that you have either a loan,
4 or together with your advisors, such knowledge and
5 experience in business and financial matters as will
6 enable you to evaluate the merits and the risks of the
7 prospective investment and to make an informed
8 investment decision; isn't that correct?

9 A. Yes.

10 Q. You understand that there are some inherent
11 risks in investing in real estate, don't you?

12 A. Yes.

13 Q. What are those risks?

14 A. That, like any investment, conditions can happen
15 that aren't part of the plan, that, either being, not
16 making the investment goals or potentially losing some
17 or all of the investment.

18 Q. Have you -- and you were willing to take those
19 risks when you made your investment in the 1900
20 property?

21 A. Yes.

22 Q. Have you had any -- well, strike that.

23 After making your investment in the 1900
24 property, did you have any conversations with
25 Mr. Peterson about how the development was progressing?

1 A. We talked a lot. I imagine that we discussed it
2 occasionally when we talked, but I don't recall any
3 specifics.

4 Q. You, I believe you testified that you came to
5 understand that Mr. Peterson actually had a listing on
6 the property, the 1900?

7 A. Yes. He may have told me that early on. I
8 didn't recall that. I had called him last week just to
9 refresh my memory on his dealings with Pat and that, and
10 he brought it up at that time.

11 Q. Okay. So did you -- you've come to understand
12 that Mr. Peterson was attempting to sell at least one or
13 more of the parcels that make up the 1900 Bisbee
14 property?

15 A. Yes. And I believe Pat had told me the same
16 thing, that the C section of the property would probably
17 not be developed, and we would like to sell it at some
18 time.

19 Q. Do you understand that there are, I believe,
20 three parcels in the 1900 property; a parcel A, a parcel
21 B, and a parcel C?

22 A. Yes, I am. I have been to the property.

23 Q. And you understand that parcel B was the parcel
24 that was going to be developed?

25 A. Yes, I am.

1 Q. Is it your understanding that Mr. Peterson had a
2 listing early on on parcels A and C?

3 A. He just told me about C.

4 Q. Do you know if Mr. Peterson had any offers to
5 buy parcel C?

6 A. No, I don't.

7 Q. Let's take a look at Exhibit S-13, which is one
8 of the exhibits that the Division, that Ms. Houle sent
9 to you.

10 Do you have that in front of you, Mr. Swandal?

11 A. Yes.

12 Q. Just to orient myself with this document.
13 There's a cover e-mail on S-13 that is an e-mail from
14 you to Mr. Eckert, who is an investigator here at the
15 Division.

16 Are all the documents, the pages that follow
17 this cover e-mail, were all of these subsequent pages
18 provided to him as attachments to this Thursday, May
19 31st, 2012 e-mail?

20 A. I would imagine they are. I would have to look
21 through them, but I know I sent him as many documents as
22 I could find. I'm looking at a few of them, and I know
23 they're ones that I sent him, yes.

24 Q. We'll just work our way through this exhibit. I
25 have some questions about some of the various e-mails,

1 and to help everyone out I'll use the Bates numbers
2 again as a reference point. Okay?

3 So if you'll turn to what should be page two,
4 which is ACC6036. You should have an e-mail at the top
5 that appears to be an e-mail from you to FD Lamer on
6 November 30th, 2009; is that correct?

7 A. Yes.

8 Q. Who is FD Lamer, if you know?

9 A. His name is Frank Lamer, and he was an
10 investigator in both the ranch and the Bisbee property.
11 I was given his name by Alan Thome.

12 Q. What, what were the circumstances of Mr. Thome
13 giving you Mr. Lamer's name?

14 A. Can I refer to the ranch property?

15 Q. Sure. Sure.

16 A. Pat had called me, Pat Shudak had called me
17 multiple times in November of 2009 looking for more
18 money for the ranch property. First it was 200,000 and
19 he was going to give me 10 percent ownership in the
20 ranch, and then it went down from there, just anything
21 that I could give him. And I insisted that before I
22 would invest anything else he needed to give me specific
23 financial documents; income statements, balance sheets,
24 and all that. And he never did. And I started getting
25 concerned.

1 And so through Jim Peterson I was able to reach
2 out to Alan Thome and ask him if he knew of any
3 investors in the ranch project, and he provided me Frank
4 Lamers' name, along with a couple other people that, at
5 the time, I didn't get ahold of. So Frank was my first
6 contact. And just was trying to dig into what was going
7 on, who the investors were, what -- I basically had no
8 information on the financial aspect of either property,
9 and I was just digging for information.

10 Q. So in this e-mail, that we're looking at on
11 November 30th, 2009, you've got, I'm jumping down about
12 two-thirds of the way down to a sentence that starts
13 after, you've got five question marks, and you write:

14 I talked to Alan today. He said they have the
15 two pieces of land up for sale in 1900 is by word of
16 mouth only.

17 Do you see that?

18 A. This is what Frank wrote?

19 Q. Yes. I'm sorry. This is what Mr. Lamer is
20 writing to you, yes.

21 A. And what was it again? I don't --

22 Q. After a series of question marks he writes: I
23 talked to Alan today. He said they have the two pieces
24 of land up for sale in 1900 is by word of mouth only.

25 A. Yes.

1 Q. And then did you understand that Mr. Lamer was
2 talking about Alan Thome?

3 A. Yes.

4 Q. Then he writes, further on he says:

5 With your permission I will send Alan a letter
6 demanding that the two of three pieces of land be put up
7 for sale immediately with a national realtor and sold.

8 Do you see that?

9 A. Yes.

10 Q. Is that what you -- did you give Mr. Lamer
11 permission to contact Mr. Thome so that the two of the
12 three parcels of land could be put up for sale?

13 A. I agreed that -- yeah, it was a strategy we
14 needed to look at.

15 Q. Okay. And do you know if that strategy was
16 carried out?

17 A. No, it wasn't.

18 Q. Why not?

19 A. We, well, we regrouped, or we grouped, found all
20 the investors in the early stages of this, between late
21 November and then through December, had a series of
22 telephone conversations, and within the month, through
23 votes by the people attending the meetings decided that
24 the first thing that we needed to do was create an
25 organization that could manage the money side of this

1 and, because it was obvious to us that Pat wasn't
2 managing it and there were a lot of questionable things
3 going on, and the whole sale of the property kind of
4 faded away with the main target being let's regroup and
5 try and move this development along.

6 Q. Whose decision was it not to list the property
7 in November 2009 after you gave permission to list the
8 property?

9 A. That was between Frank and Alan. I don't think
10 Alan was -- I mean, obviously, Alan had both of these
11 developments, and his focus was on moving these forward.

12 Q. Was it your understanding that Mr. Thome did not
13 want to sell any of the 1900 property?

14 A. I, I never talked with Alan. I, at that point I
15 wasn't talking to Alan; it was specifically Frank and
16 Alan. Frank had taken the lead on it, and he was very
17 persistent that we sell it. Honestly, I wasn't. It
18 didn't matter to me. I actually had just started a new
19 job and was very busy and, you know, didn't have a ton
20 of time to spend on this. And Frank agreed to take the
21 lead and see if he could push Alan to sell the property.

22 I honestly can't remember if I had a desire to
23 do it or not. I just wanted to -- I was getting very
24 concerned about both investments and was glad there were
25 other people involved starting to look at all the

1 problems that we had uncovered.

2 ALJ STERN: Excuse me, sir. This is Judge Stern
3 again.

4 This is, again, around November 2009 then?

5 THE WITNESS: November, December, yes.

6 ALJ STERN: Okay. Go ahead.

7 BY MR. SCHULMAN:

8 Q. You understand that in December 2009 Mr. Shudak
9 resigned as manager of Parker Skylar and basically
10 assigned all of his interest in Parker Skylar back to
11 the investor group?

12 A. Yes, I am.

13 Q. Were you involved in any of the dialogue among
14 the investors that led up to the presentation of an
15 assignment agreement to Mr. Shudak?

16 A. Yes. As a group, we had the people in Omaha
17 that grew up with Pat and knew him well and the people
18 in Arizona that were, that knew Pat closely, were
19 assigned tasks to try to dig into questions of him and
20 public records to find out what was going on. And
21 that's when we realized that the project was -- this was
22 early December that in our meeting it was discovered
23 that 5 to 700,000 was missing. The property was over
24 sold by, it was 130 percent, and that Pat had several
25 judgments totaling over a million dollars against him.

1 So we decided as a group that we couldn't have
2 him, if this was going to survive at all and we had a
3 chance to get any money out of this, we needed him to
4 resign.

5 Q. I miss -- I didn't hear what you said about
6 monies not being accounted for. I didn't hear the
7 figure that you gave.

8 A. It was, at the time we were thinking 5 to
9 700,000. That's what one of the members had come up
10 with. This was very early stage. It was just trying,
11 everybody grasping for information, trying to put
12 together what had happened.

13 Q. Who was the investor that believed that
14 somewhere between 500 and \$700,000 was not accounted
15 for?

16 A. I believe it was one of the Omaha -- it was
17 either Paul McCardle or Frank Lamer who were talking to
18 him. It was Frank. He had stated to the group that 5
19 to 700 was missing.

20 Q. Did you ever see any documentation to
21 substantiate that claim?

22 A. No. Well, eventually when Marty took over,
23 Marty Schwank took over as manager, and we pieced
24 together all the investors we could find in the property
25 and all the monies that had gone into it. With, through

1 Alan Thome's help, we were able to piece that together.
2 We substantiated that, and what we came up with was even
3 more than what we originally speculated. I think it was
4 closer to 900,000.

5 Q. And this is all based on documentation provided
6 to you by Mr. Thome?

7 A. I can't tell you where all the documentation
8 came from. I was never assigned to find any of this.
9 And given most of this was on teleconferences, I never
10 saw any hard documents.

11 Q. Do you understand that Mr. Thome is no longer
12 involved in the Bisbee project?

13 A. Yes, I am.

14 Q. What is your understanding of how that came to
15 be?

16 A. We had concerns. I'd say Marty Schwank and
17 myself talked regularly. I came down in January of 2010
18 and met Alan Thome and went down to the Bisbee property
19 with Marty and Linda Schwank and Alan Thome, and spent
20 the day down there looking at the property, and then at
21 the same time attended meetings in Phoenix with all the
22 different investors that were pretty much in Arizona.

23 I guess I'm getting a little off track here.
24 What was the question again?

25 Q. My question was what is your understanding of

1 how it came to be that Mr. Thome was removed as manager
2 of the property?

3 A. Oh, absolutely. I'm sorry.

4 So, at the time Alan gave all of us a lot of
5 documentation, and basically that was, it confirmed to
6 me that it made sense to put more money into this. I
7 didn't want to lose my \$300,000. And then over the next
8 few years as it, as the final plat work drug along, we
9 got concerned as we were getting closer to what was the
10 deadlines for paying the balloon payment on the loan,
11 which was over a million dollars, and started asking
12 more direct questions of Alan about, you know, what the
13 real possibilities were of this ever being developed.
14 And he kept being very optimistic about it. And we
15 decided to bring in an independent person that knew
16 about real estate development and get his assessment of
17 whether it made sense to continue with the development.
18 And his assessment was that it did not make sense, and
19 that we should try and sell the land. We then tried to
20 work, or Marty primarily, Marty Schwank, tried to work
21 with Alan to sell the land. He was agreeable but,
22 somewhat agreeable, but it just drug on and on and on.

23 And we decided at the time it would be best to
24 try to do this -- our primary goal was to sell the land,
25 that it would be best if we did that as a financial

1 group who had primary ownership in the property to try
2 and sell it ourselves. And that's when we asked Alan to
3 resign.

4 ALJ STERN: Excuse me. When was that? Was that
5 in 2012?

6 THE WITNESS: July of 2012.

7 MR. SCHULMAN: Thank you, Your Honor. You just
8 anticipated my next question.

9 BY MR. SCHULMAN:

10 Q. Let me now take you -- well, strike that, while
11 we're still in this general time frame.

12 You understand that at some point an entity
13 called 1900 Investors, LLC, was created?

14 A. Yes.

15 Q. What's your understanding of why that entity was
16 created?

17 A. Primary goal was to save all of our investments.

18 Q. And how would the --

19 A. That we put in.

20 Q. I'm sorry.

21 A. To save our investments. To save my \$300,000
22 that I put into the project.

23 Q. How was the creation -- what was your
24 understanding of how the creation of 1900 Investors,
25 LLC, would save your investment?

1 A. That it --

2 ALJ STERN: Hello? Are you there, sir?

3 I don't think we have a connection.

4 Mr. Swandal?

5 Let's take a brief recess and see if we can
6 reestablish contact.

7 (Brief recess.)

8 ALJ STERN: Returning back on the record.

9 Go ahead, Mr. Schulman.

10 BY MR. SCHULMAN:

11 Q. I'm not sure where you -- you might have been
12 giving your answer and we might have lost you in
13 between. So let me ask the question again.

14 What was your understanding of how the creation
15 of 1900 Investors, LLC, was going to save your
16 investment?

17 A. I said it would, the goal, or the understanding
18 that there would be clarity in what, more direct
19 involvement of the investors in seeing the project
20 through.

21 At the time the market, as we all know, the
22 housing market was continuing to be down and in a funk,
23 and on my trip to Sierra Vista, it looked like things
24 weren't quite as bad down there, so it made sense that
25 if we just try and get this to, at least a tentative

1 plat, it would make the land a lot more valuable to sell
2 raw, with the plat. Alan had agreed to carry out the
3 work for free, but basically at the time he was, you
4 know, charging money, which was agreed to originally in
5 this Parker Skylar agreement. So Alan agreed to not
6 take a salary and get this done and try and get it to
7 final plat. So, we had obligations to pay our mortgage
8 note irregardless. It made sense to continue on with
9 the work.

10 Q. Did you understand that 1900 Investors, LLC,
11 replaced Parker Skylar as a member in Cochise County
12 1900, LLC?

13 A. Yes.

14 Q. Do you know why that was done?

15 A. No. There was a lot of work done with -- we had
16 members that took lead on it in Arizona. It was Craig
17 Thompson and Marty Schwank and Tim Olp, and they met
18 regularly with our attorney, Richard Chambliss, and they
19 came back as a group, Marty and Tim and Craig, with the
20 recommendation that we just start with the new LLC. I
21 don't know the technical details of why.

22 Q. Do you even know if you're still a member of
23 Parker Skylar?

24 A. I just, I guess assumed that it doesn't exist
25 anymore.

1 Q. Going back to Exhibit S-13, I'd like to turn
2 your attention to a series of e-mails between yourself
3 and Mr. Lamer in December 2009. So let me have you
4 first look at an e-mail with Bates No. 6047, ACC006047.
5 If you'll just let me know when you're there.

6 A. Just about. Okay. I'm on 47.

7 Q. Okay. And you'll see that there appears to be
8 an e-mail from you to Mr. Lamer with a copy to John
9 Schnaible dated November 30th, 2009; is that correct?

10 A. Yes.

11 Q. Okay. Just about, I don't know, five or six
12 lines down from your e-mail you write:

13 I did just find out in the last few weeks that
14 the two parcels of land for sale in Bisbee are not
15 listed.

16 Do you see that?

17 A. Yes.

18 Q. Then you write:

19 Jim Peterson, paren, the one I have been cc all
20 the e-mails to, close paren, brought me into this deal
21 through his relationship with Pat. Jim is a realtor in
22 Arizona and had the property listed at \$5,000 per acre?

23 Do you see that?

24 A. Yes.

25 Q. And so at that time, and back in November 2009,

1 you understood that Mr. Peterson had the property listed
2 at \$5,000 per acre?

3 A. I think I stated that he had at one time.

4 Q. Okay.

5 A. That's the way that looks.

6 Q. Okay. I understand. And then you write:

7 Apparently Alan let the listing expire and then
8 took the price down to about half the \$5,000?

9 How did you come to understand that?

10 A. Jim must have provided me the information.

11 Q. And then you write:

12 Jim had several people interested at \$5,000 and
13 is certain that if he would have had the opportunity to
14 sell it at the current price he could have moved it.

15 Do you see that?

16 A. Yes.

17 Q. And that is what Mr. Peterson told you?

18 A. It appears that it was, yes.

19 Q. And this was back in November 2009?

20 A. Yes. Well, that -- this all happened before
21 November 2009, though, it appears to me. I'm stating
22 that this had happened in the past.

23 Q. Right. But as of November 2009, Mr. Peterson
24 had told you that several people interested at 5,000,
25 were interested at \$5,000, and is certain that if he had

1 had the opportunity to sell it at the current price he
2 would have moved it, correct?

3 A. Yeah.

4 ALJ STERN: You mean the \$2500? Do you mean
5 that 2,500 versus the 5,000? What's the current price?
6 Yeah, I'm asking you.

7 MR. SCHULMAN: You're asking me?

8 ALJ STERN: Yeah. What are you referring to
9 there?

10 MR. SCHULMAN: I'm just referring to his e-mail.

11 BY MR. SCHULMAN:

12 Q. Sir, what was your understanding of what
13 Mr. Peterson was telling you in November of 2009 about
14 how certain he was, and at what price is he certain he
15 could have sold the property at?

16 A. It appears that he thought he could sell it at
17 5,000 an acre.

18 Q. Now, with -- when you read e-mails, it's kind of
19 counterintuitive because you start at the back and work
20 your way to the last e-mail as you go forward. So let
21 me have you go back a page to ACC6046.

22 A. Okay.

23 Q. There's an e-mail at the bottom of that page,
24 which is an e-mail from Mr. Lamer back to you on
25 December 1st, 2009, so he's writing to you the next day.

1 Do you see that?

2 A. Yes.

3 Q. And Mr. Lamer writes to you:

4 I'll be working on a letter to Alan today for
5 the immediate sale of the two pieces of land on the 1900
6 property?

7 Do you see that?

8 A. Uh-huh.

9 Q. And did you understand that Mr. Lamer was going
10 to do that?

11 A. Yes.

12 Q. Then Mr. Lamer writes: I told him we all wanted
13 it sold and I would take charge in doing that since
14 nothing could get done with him and Pat.

15 So these were issues that you were having with
16 Mr. Thome back in December 2009, correct?

17 A. Yes. Again, mainly Frank. He was on Alan's
18 case. It was all about what Alan wasn't getting done at
19 that very short period of time, which was about a two
20 week period before we had come together as a group, and
21 that's when we stopped pursuing the sale. When we got
22 more members, more investors involved that got a full
23 understanding of what people's wishes were.

24 This was primarily what Frank wanted to do. And
25 I was saying okay, go for it. At the time I didn't have

1 a lot of time to spend on it, and he was taking the
2 lead, so I was fine with it.

3 Q. And then he writes that, that he, after talking
4 to Alan, he writes:

5 He -- as Mr. Thome -- did not take that very
6 well and said if anything is going to go on with the
7 property with selling it, that he is the managing
8 partner in this project and he will be the point guy.

9 And is that what you understood Mr. Thome's
10 position to be?

11 A. Yes.

12 Q. Then you write back to -- now let's work our way
13 up that page. You write back to Mr. Lamer, and you
14 write:

15 Frank, thanks for taking the lead on this. I'm
16 perplexed at Alan's reluctance to pursue a sale on the
17 excess parcels?

18 Do you see that?

19 A. Yes.

20 Q. The excess parcels, you're talking about parcels
21 A and C?

22 A. Yes. Must have been.

23 Q. Then in the last e-mail on the string at the top
24 of the page, Mr. Lamer writes back, same day, and
25 Mr. Lamer writes:

1 If we sell the two pieces of land it would pay
2 off the note and leave a little bit for the final piece
3 of land to develop. I think this is the only option
4 unless I am missing something. I talked to Jim Peterson
5 today and he does not think the land is worth the 2500
6 per acre we were hoping for. He said more like 2000 for
7 the better price, better piece, and maybe 1500 for the
8 other. That comes out to about 2 million, give or take.
9 I'm not sure if Alan will go for that or not. Frank.

10 Do you see that?

11 A. Yeah. I didn't follow which way you were going,
12 up or down. Which page is this on?

13 Q. It's on the same page, page 6046.

14 A. Okay.

15 Q. Top of the page.

16 A. Okay. Yeah.

17 Q. Do you see where I was reading from?

18 A. Yes, I do.

19 Q. Okay. So -- by the way, you, I presume you
20 think Mr. Peterson is good at what he does?

21 A. Yes.

22 Q. Okay. And do you believe him to be an honest
23 person?

24 A. Yes.

25 Q. And if he was saying at the time that he thought

1 that you all could get \$2,000 per acre for the better
2 piece and maybe 1500 for the other, did you have
3 confidence in his opinion in that regard?

4 A. Yes.

5 Q. And so that math would have come out to, if you
6 were able to sell those pieces of property back in
7 December 2009, you could have grossed approximately
8 \$2 million, correct?

9 A. Yes.

10 Q. Do you know why this plan was not pursued?

11 A. Yes. Because this was Frank Lamers and Craig
12 Swandal, it wasn't the entire group of 1900 people that
13 invested. Over the next two weeks we found about a
14 dozen investors. We started having teleconferences, and
15 as a group agreed that the market was soft. If I
16 recall, 2000, end of 2009 was when the market bottomed
17 out, and all of us thought the chances of selling it --
18 I mean, you can estimate the price of land at anything,
19 but, you know, nothing was moving at the time. And all
20 of us thought, if Alan was willing to move forward
21 eventually and not take any more salary, then we had
22 nothing to lose. We could have a tentative plat and the
23 land would be worth a lot more.

24 Jim Peterson told me that, specifically. He
25 said if you can get it to final plat, or tentative plat,

1 that land is going to be worth a lot more, and probably
2 the market is going to come back by then. And I
3 probably gave that information to the group on one of
4 our conference calls. I don't recall specifically.

5 But there were, again, we had a quorum of people
6 that had invested in the property, and the group, as a
7 whole, decided that was the best thing to do. And at
8 that point, over the next two months, we basically had
9 to decide how much we really believed in this. And
10 Frank Lamer was not one that went forward and put any
11 more money into this.

12 Q. And all of these decisions that are being made
13 with the 1900 investors, these decisions are being made
14 without any input from Mr. Shudak, correct?

15 A. Yes.

16 Q. And it's true that the investor group never even
17 listed the property with Mr. Peterson to see if you
18 could get the \$2,000 per acre for the better piece and
19 1500 for the other, correct?

20 A. Correct.

21 Q. And that was because Mr. Peterson advised you
22 all that if you held on to the property and brought it
23 to final plat, you might do even better financially,
24 correct?

25 A. I, I believed -- I know he talked to me about

1 that. He was the one that said that makes a lot of
2 sense. I think, he's a realtor and if he can get a
3 listing, he's going to want it. So I think he was fine
4 either way. Again, I don't recall specifically.

5 But he was the one that, yes, told me to bring
6 the property to final plat would make a lot of sense.

7 Q. Okay. And in hindsight, that proved not to be a
8 very sound strategy, was it?

9 A. No.

10 Q. Just quickly, I have just one question on
11 Exhibit S-56, which is the Parker Skylar operating
12 agreement that should have been sent to you.

13 Do you have that in front of you?

14 A. It was 56?

15 Q. Yes. It's, the first page should say Operating
16 Agreement, Parker Skylar & Associates.

17 A. Yes.

18 Q. Is this one of the documents you reviewed before
19 you made your investment?

20 A. Yes, it is.

21 Q. And you looked over all of this, the entire
22 agreement?

23 A. I scanned through it, and my attorney reviewed
24 it in detail.

25 Q. Can you please turn to page seven of the Parker

1 Skylar operating agreement?

2 A. Okay.

3 Q. Do you see in paragraph 5.12, which is at the
4 bottom of page seven, under the caption Compensation,
5 "The salaries and other compensation of any Manager of
6 the Company shall be fixed from time to time by the
7 manager?

8 A. Yes, I do.

9 Q. And you understood that Mr. Shudak was the
10 manager of Parker Skylar?

11 A. Yes.

12 Q. Okay. And you understood that, based on that
13 paragraph, there was the possibility, at least, if not
14 the reality, that the manager could take a salary as the
15 manager of Parker Skylar?

16 A. As I read it now, yes. I would have expected my
17 attorney would have given me that when I asked him are
18 there any concerns on your part if I should sign this
19 document, and he said no.

20 MR. SCHULMAN: Mr. Swandal, I thank you for your
21 time. I do not have any further questions at this time.

22

23 EXAMINATION

24 BY ALJ STERN:

25 Q. Mr. Swandal, this is Judge Stern again. A quick

1 question. What were those monthly payments on the
2 property, the 1900 project there? Do you recall?

3 A. Monthly payments to whom?

4 Q. Wasn't that the one you had to make to a
5 gentleman named Esch?

6 A. They were annual, our note had annual payments.

7 Q. What was the annual payment, if you recall?

8 A. I think it was roughly 200,000.

9 ALJ STERN: Okay. I, it's coming back to me. I
10 think it might be about 190, but I wasn't sure. Okay.

11 Do you have any redirect, Mr. Millecam?

12 MR. MILLECAM: Yes, Your Honor. A few
13 questions.

14 ALJ STERN: Okay. See if the court reporter
15 wants a break.

16 Are you ready to go?

17 THE REPORTER: I'm okay.

18 ALJ STERN: All right. We'll keep going.

19 The Division's attorney is going to ask you a
20 few more questions.

21 THE WITNESS: Okay.

22

23 REDIRECT EXAMINATION

24 BY MR. MILLECAM:

25 Q. Mr. Swandal, this is Ryan Millecam again with

1 the Division. I've just got a few more questions on
2 redirect.

3 Let me first ask you, you said that Mr. Peterson
4 informed you of this investment initially; is that
5 correct?

6 A. Yes.

7 Q. Was Mr. Peterson an employee of Parker Skylar?

8 A. No.

9 Q. Were you aware of any other employees of Parker
10 Skylar?

11 A. No.

12 Q. In your experience, who was Parker Skylar?

13 A. Pat Shudak.

14 Q. Did Mr. Shudak's representation to you about the
15 1900 acres project factor into your decision to invest?

16 A. Yes.

17 Q. You also talked about a Mr. Dan Curtis. Was he
18 an employee of Parker Skylar?

19 A. No.

20 Q. What was his relationship, again, to Parker
21 Skylar?

22 MR. SCHULMAN: Objection.

23 THE WITNESS: After we had signed --

24 ALJ STERN: Excuse me. Mr. Schulman is
25 objecting to a question.

1 Go ahead, Mr. Schulman.

2 MR. SCHULMAN: Yes, Your Honor. I have an
3 objection to foundation. The question was what
4 relationship did Mr. Curtis have with Parker Skylar. I
5 don't believe there's been any testimony.

6 ALJ STERN: I don't even know who Mr. Curtis is,
7 so I'll sustain it.

8 Do you want to lay some foundation?

9 MR. MILLECAM: Let me rephrase.

10 BY MR. MILLECAM:

11 Q. First of all, can you explain how you came to
12 know Dan Curtis?

13 ALJ STERN: Who is Dan Curtis?

14 MR. MILLECAM: That's a good question.

15 THE WITNESS: I had all intentions of reviewing,
16 having all of these documents that Pat Shudak sent me,
17 reviewed by my attorney in Buffalo, Minnesota. He was
18 out of the country at the time for at least ten days,
19 and Pat was very insistent that they needed money right
20 away to keep the developments going, and asked if I
21 would consider him recommending an attorney to me in
22 Arizona who was a real estate attorney, and I said I
23 would consider it. And so I called Dan and got an
24 understanding of his background and decided I was,
25 again, I was traveling all over the world, I was very,

1 very busy at the time, and I just wanted to move this
2 along quickly. I, given what I was given by Pat, this
3 looked like a great investment, and I wanted to move it
4 along, so I entered an agreement with Dan Curtis to
5 represent me. He reviewed all the Parker Skylar
6 documents.

7 And during my discussions over this about week
8 long period, he disclosed to me that he had seen the
9 property. He had flown down, there's an airstrip close
10 by to the ranch property, and was very aware of it. And
11 I had thrown out a couple questions to him about his
12 relationship, and he said he had done some work with Pat
13 in the past.

14 And then his name popped up again when we were
15 looking at building a solar, or trying to bring a solar
16 operation into, into the Bisbee project, and Marty
17 Schwank told me that Dan Curtis was there, somehow
18 involved in that. So he had some involvement in the
19 property. I don't know specifically what it was.

20 After the initial documents were signed, I
21 didn't try to reach Dan Curtis again until the time that
22 all, in late November, early December of 2009 or early
23 2010 when we had to prove our investments, and I was
24 never able to reach Curtis to give me the specific
25 information that I was looking for.

1 So my only relationship was with him, was about
2 that week's time when I paid him to review the Shudak
3 documents, the Parker Skylar documents, the operating
4 agreement, the investment agreement, and asked him very
5 specifically if it looked like a good investment and he
6 said yes, it was. And I had no concerns, he had no
7 concerns. He thought I should not be concerned about
8 anything in the documents.

9 BY MR. MILLECAM:

10 Q. Mr. Swandal, I'm going to switch gears a little
11 bit here and ask you, again, some questions about this
12 Exhibit S-31, your investment documents. Could you pull
13 that up and have that in front of you again?

14 Specifically, I'm going ask about, we are going
15 to use the Bates numbers again, on the bottom of the
16 page that's been labeled ACC6100.

17 Do you have that in front of you, Mr. Swandal?

18 A. Yes.

19 Q. Okay. Let's go ahead and look at the paragraph
20 at the top, paragraph 1(a). The first sentence of that,
21 it says that you have received and carefully reviewed
22 information provided to me in writing by the company
23 about the company, its proposed real estate development
24 business, its financial plans and the securities, then
25 it enters a defined term called the Disclosure to refer

1 to these documents.

2 Can you once again list the documents you
3 received related to this investment prior to investing?

4 A. It was these two documents, the note and the
5 investment agreement, there was an accredited investor
6 survey, it was a very generic type form that I filled
7 out, and the operating agreement that I was just
8 reviewing with Mr. Schulman.

9 Q. Which operating agreement was that, Parker
10 Skylar's?

11 A. Yes.

12 Q. And you also received Cochise County 1900's
13 operating agreement?

14 A. I have it in my possession. I can't recall
15 exactly when I received that, but I would imagine it was
16 at the same time.

17 Q. Okay. If you go down about midway through this
18 paragraph, it says:

19 I and my advisors have had a reasonable
20 opportunity to ask questions of and receive answers from
21 representatives of the company concerning the company,
22 its business and the units, and all such questions have
23 been answered to my full satisfaction?

24 To whom did you ask these questions?

25 A. To -- some of the questions that I had before I

1 had my attorney review the documents I asked Pat
2 specifically. I don't remember what they were. I went
3 through the document, jotted a few notes, and called Pat
4 and had him talk me through them, and they all seemed
5 like benign issues, whatever they were. I just remember
6 not making an issue of them.

7 Q. Is it fair to say that Pat Shudak primarily
8 provided you with information about the development
9 outside of the few documents that are described as the
10 disclosure here?

11 A. Could you repeat that, Ryan?

12 Q. Yes. First off, we talked about what was the
13 disclosure of the documents that consist of the
14 disclosure. The next sentence here that we read was
15 about representatives from the company.

16 Maybe a better question is would you, is it fair
17 to say that these are your two primary sources of
18 information about this investment?

19 MR. SCHULMAN: Objection, Your Honor. There's
20 no time period with that question.

21 MR. MILLECAM: I can ask one.

22 BY MR. MILLECAM:

23 Q. Prior to investing, were these your two primary
24 sources of information about the investment?

25 A. Additionally, I had a blueprint drawing of the

1 ranch -- so, yes, for Parker Skylar and the 1900, this
2 was the sole documentation.

3 Q. A few quick questions.

4 A little bit earlier on we read about an offer
5 that Mr. Jim Peterson had received about selling the
6 land at \$5,000 an acre?

7 A. Yes.

8 Q. My first question is did you ever receive a copy
9 of a written offer?

10 A. No.

11 Q. Was the opportunity to sell this property ever
12 put to a vote to the Parker Skylar investors?

13 MR. SCHULMAN: Objection, Your Honor. Time
14 frame again.

15 ALJ STERN: If you could, could you try and
16 narrow it down. Or I guess you may mean the entire
17 three or four year period in there.

18 MR. MILLECAM: I meant at the time that we -- we
19 have an e-mail here, that around the date of the e-mail
20 they were discussing that offer. Subsequent to hearing
21 about this offer and discussing it, did the members have
22 a membership meeting voting on that offer?

23 ALJ STERN: You're talking about that S -- or
24 which, where's your --

25 MR. MILLECAM: Let me strike that question. I

1 think we can stay a little more general and get the gist
2 of it.

3 BY MR. MILLECAM:

4 Q. Did members ever vote on any offers to sell the
5 properties?

6 A. In 2012, in mid 2012, when we asked Alan to
7 resign, we voted as a group to move ahead and try and,
8 and give Marty the authorization to try and sell the
9 property. That was the first membership vote to list
10 the property and try and sell it.

11 Q. Okay. We talked, we saw some e-mail
12 communications between you and Mr. Frank Lamer.

13 Can you describe, to your knowledge, what is
14 Frank Lamer's role in Parker Skylar?

15 A. Frank, as I understand it, was a high school
16 friend of Pat Shudak's who invested, like me, one of the
17 few who invested in both the ranch property and Parker
18 Skylar. He was on a lot of the calls between, and
19 e-mails, between November 2009 and, at the time of the
20 first cash call for the level one investors that decided
21 to put more money into it and move it forward. He was
22 actively involved in digging for information and trying
23 to reassemble and try and save the investment. So when
24 it came to needing to come up with money and feel
25 confident that, that it was a strategy to get the money

1 back, he declined and became a level two investor. And
2 I really haven't heard much from him since then.

3 Q. To your knowledge, was he ever a manager of
4 Parker Skylar?

5 A. No.

6 Q. To your knowledge, did he ever have authority to
7 approve a sale of the land?

8 A. No, he did not.

9 Q. Let me talk a little bit about, at some point
10 you became aware there was a problem, you decided, your
11 words in cross-exam were that members decided to dig
12 into Parker Skylar. As they did that, they discovered
13 several judgments totalling over 1 million.

14 Did you know about any --

15 A. Yes.

16 Q. Thank you. Did you know about any of these
17 judgments prior to investing?

18 A. No, I did not.

19 Q. Did you know about any court cases against Pat
20 Shudak prior to investing?

21 A. No, I did not.

22 Q. Would knowing about these have affected your
23 decision to invest in Parker Skylar?

24 A. Yes.

25 Q. And how would they have affected your decision?

1 A. I would not have invested.

2 Q. Give me just a minute or two to look at my
3 notes.

4 Let me talk -- just a few questions about Parker
5 Skylar's operating agreement.

6 You said that you had your attorney review that,
7 correct?

8 A. Yes.

9 Q. Did you --

10 ALJ STERN: Which attorney is that? Is that the
11 Arizona attorney or the Minnesota attorney?

12 THE WITNESS: Dan Curtis, the Arizona attorney.

13 ALJ STERN: Okay. Go ahead.

14 BY MR. MILLECAM:

15 Q. You yourself did not review it?

16 A. I looked through the document. I scanned
17 through it and came up originally with some questions
18 and talked to Pat about them. But I do not recall what
19 the questions were specifically.

20 Q. In your testimony just now you indicated that
21 you were not aware about the salary about Mr. Shudak
22 taking, or excuse me, about the provision about
23 Mr. Shudak taking a salary?

24 A. Correct.

25 Q. Earlier in your testimony you indicated that

1 Mr. Shudak would receive his payments on the back end?

2 A. Correct.

3 Q. And that was your expectation about how
4 Mr. Shudak would be paid in this enterprise; is that
5 correct?

6 A. Yes. He talked to me repeatedly about how he
7 was a successful business person and his sole purpose
8 was to bring this property to the point where we could
9 start making a lot of money off of it. And with the
10 documents he had given me it appeared that he had
11 91 percent share in Parker Skylar. That would have been
12 a lot of money, even based on -- the property was valued
13 at about \$8 million, so his 91 percent of the 50 percent
14 that Parker Skylar had was, would be a pretty handsome
15 payday.

16 ALJ STERN: This is Judge Stern again.

17 Weren't you aware he was selling other
18 membership interests in Parker Skylar, which you say he
19 had 91 percent. If he had 91 percent of it, he kept
20 selling membership interest, did his interest go down?

21 THE WITNESS: He told me -- I remember
22 specifically saying, he was trying to avoid delusions of
23 Parker Skylar, that he would be as cautious as he could
24 with the money, at bringing more investors in so that we
25 all had a bigger share. And, again, my operating

1 agreement with Cochise County stated that, one of those
2 documents states specifically that he had 91 percent
3 ownership. That was the document that I saw prior to
4 investing.

5 ALJ STERN: Okay. Go ahead, Mr. Millecam.

6 MR. MILLECAM: I have no further questions.

7

8 FURTHER EXAMINATION

9 BY ALJ STERN:

10 Q. Okay. I have a couple questions for you, sir.

11 You testified that if you'd known about these
12 lawsuits, et cetera, before, you wouldn't have invested
13 in this program.

14 Weren't you concerned when you first met
15 Mr. Shudak with your friend, the real estate man -- what
16 was his name?

17 A. Jim Peterson.

18 Q. Yeah, Jim Peterson. You said Mr. Shudak,
19 apparently, was emphasizing the fact that you had to
20 invest quickly to get this opportunity because they owed
21 money. Weren't you concerned then if there was a
22 shortage of cash at the time they wanted you to invest,
23 this was going to continue to be a problem?

24 A. I should have seen it as a flag, yes, in
25 hindsight.

1 Q. How much did you expect to make from this? I
2 know the note that you had there apparently was about --
3 was that 14 percent?

4 A. Yes.

5 Q. What was Mr. Shudak promising you on your
6 \$300,000 you were going to make, besides 14 percent
7 interest for two years?

8 A. To paraphrase, a lot of money. And, again, if I
9 could go back to the ranch, he gave me a table of what a
10 \$100,000 investment would be. And he gave a scenario of
11 raw land all the way to selling all the lots, and it
12 went from an 83 percent return on investment up to a
13 380 percent return on investment.

14 Honestly, I could tell he was really a salesman
15 and pushing this hard, and some of the numbers seemed a
16 little bit high, but I figured if I was getting
17 14 percent return on my money at the time, it was better
18 than any other investment I could make. And I was
19 assured that, at a minimum, the raw land was worth --
20 and again this was on both properties -- the raw land
21 was worth a lot of money that would still give me a
22 return on investment, but as my attorney had indicated,
23 to fall back on. So it appeared that at a minimum I was
24 going to make the 14 percent interest. In long term
25 there could be a lot more money, up to 300 percent

1 return.

2 Q. Let me ask you this.

3 How many months did you get your 14 percent on
4 your \$300,000?

5 A. It was, it was to be paid at the end of the two
6 year period. I never received anything.

7 Q. Oh, okay. All right. So your end result on
8 this investment was zero, correct?

9 A. Yes. Well, I put another 130,000 into it to try
10 to save it, so I have \$430,000 invested in it.

11 Q. Okay. That's when the cash call came and you
12 put another 130,000 in?

13 A. We had up to, I think, seven cash calls, so it's
14 been incremental over the last two years.

15 Q. There aren't any more cash calls I assume,
16 right?

17 A. No. Not going forward, we hope.

18 ALJ STERN: Okay. Do you have any more
19 questions, Mr. Schulman?

20 MR. SCHULMAN: Just two follow up.

21 ALJ STERN: Okay. A couple more questions for
22 you. Go ahead.

23 MR. SCHULMAN: Thank you.

24 ///

25 ///

1 RE CROSS-EXAMINATION

2 BY MR. SCHULMAN:

3 Q. You testified that you saw some document, I
4 believe, that showed that Mr. Shudak had a 91 percent
5 interest in an entity; is that correct?

6 A. Yes.

7 Q. Do you know whether, do you know whether the
8 document that you're referring to was related to the
9 Bisbee property or the Tombstone property?

10 A. It was the Bisbee property.

11 Q. And what was this document that showed
12 Mr. Shudak having a 91 percent interest in? Was it
13 Parker Skylar?

14 A. Yes.

15 Q. What was the document that showed this figure?

16 A. It was, it was all e-mailed to me in a large
17 string. It was part of the -- let me look through the
18 documents here. I thought I had it.

19 Q. Well, sir, let us know if you're looking at
20 documents that are not exhibits in this case, because
21 you're limited to looking at the documents that have
22 been marked as exhibits. Hello?

23 A. Yes. I'm looking through the operating
24 agreement. I guess it's not on there. I can't recall
25 exactly what document, but it was one I was provided,

1 that my attorney reviewed before I invested in the
2 property. I thought it was part of the investor notes
3 and investment agreement. I thought it was all part of
4 that same document, but I'm not seeing it right now.

5 Q. And just to be clear with respect to Parker
6 Skylar, you got your note, your investment agreement,
7 and the operating agreement for the Parker Skylar, LLC,
8 correct?

9 A. Yes.

10 Q. Those were the only documents you received
11 concerning Parker Skylar, correct?

12 A. If you could hang on a second, let me -- I'm
13 looking through the -- okay. My mistake. I thought it
14 was all part of the investment agreement document, but I
15 don't see it in there, so...

16 And I know I stated that that's all I had
17 received but, again, I thought that that was part of
18 that document. But it must have been an attachment that
19 isn't showing here.

20 Q. Let me just switch gears.

21 You testified in your redirect that at some
22 point in time you became aware that there were judgments
23 against Mr. Shudak; is that correct?

24 A. Yes.

25 Q. Okay. And do you recall that Mr. Millecam asked

1 you if you had known about the judgments before you
2 invested would that have influenced your decision
3 whether to invest or not? Do you recall that?

4 A. Yes.

5 Q. Do you know when those, do you know when any
6 judgments were entered against Mr. Shudak?

7 A. When we first started coming together as
8 investment groups they had already happened.

9 Q. Do you know if Mr. --

10 A. It was prior to --

11 Q. I'm sorry. Go ahead. I didn't mean to
12 interrupt you.

13 A. It was prior to December of 2009. I don't know
14 the details.

15 Q. Do you know if Mr. Shudak had any judgments
16 against him before you made your investment?

17 A. I was not aware of them, no, of any.

18 Q. As you sit here today, are you aware of any
19 judgments against Mr. Shudak before you made your
20 investment?

21 A. I'm confused at the question.

22 Q. Sure. As you sit here today, are you aware of
23 any judgments against Mr. Shudak that were entered
24 against him before you made your investment?

25 A. I am not aware of any judgment. I was not aware

1 at the time I invested of any judgments against him. I
2 currently am aware that he had judgments against him,
3 but I don't honestly know what the dates were.

4 Q. And, of course, to state the obvious, if he
5 didn't have judgments against him before you made your
6 investment, there was nothing for him to disclose with
7 respect to judgments against him, correct?

8 A. Correct.

9 MR. SCHULMAN: Thank you. No further questions.
10 Thank you.

11 ALJ STERN: Okay. Done with this witness,
12 Mr. Millicam?

13 MR. MILLECAM: Yes, Your Honor.

14 ALJ STERN: Okay. We want to thank you for your
15 time today, Mr. Swandal. And I guess for him to
16 disconnect all he has to do is hang up the phone. Okay.
17 Thank you, sir.

18 THE WITNESS: All right. Thank you.

19 ALJ STERN: Now, your next witness is -- we're
20 going to take a break at this time -- but your next
21 witness is also a telephone witness?

22 MR. MILLECAM: That's correct, Your Honor.

23 ALJ STERN: Telephonic witness.

24 Where is that person calling in from?

25 MR. MILLECAM: Nebraska.

1 ALJ STERN: So they're somewhere around our time
2 frame. Maybe an hour -- two hours ahead, someone points
3 out.

4 All right. Well, let's come back about a
5 quarter after 1:00. And maybe you can communicate with
6 that person in the interim to call in then.

7 And at this time we'll go to recess.

8 (Recess taken from 11:31 a.m. to 1:24 p.m.)

9 ALJ STERN: We're back on the record in the case
10 of Patrick Shudak, Docket No. S-20859A-12-0413.

11 And at this time we'll continue.

12 Do you want call your next witness, please,
13 Mr. Millecum?

14 MR. MILLECUM: Yes. The Division calls Steve
15 Berendes.

16 ALJ STERN: Okay. Mr. Berendes, this is Judge
17 Stern. The court reporter will swear you in at this
18 time, so you'll hear her, and you'll have to acknowledge
19 with an affirmative answer to her administration of the
20 oath. Okay?

21 MR. BERENDES: All right.

22 ///

23 ///

24 ///

25 ///

1 STEVEN J. BERENDES,
2 called as a witness on behalf of Staff, having been
3 first duly sworn by the Certified Reporter to speak the
4 truth and nothing but the truth, was examined and
5 testified as follows:

6

7 DIRECT EXAMINATION

8 BY MR. MILLECAM:

9 Q. Mr. Berendes, this is Ryan Millecam speaking.
10 Mr. Berendes, can you please go ahead and state
11 your full name for the record?

12 A. Steven J. Berendes.

13 Q. Mr. Berendes, where do you currently reside?

14 A. In Red Oak, Iowa.

15 Q. And how long have you resided there?

16 A. Since 1991.

17 Q. Mr. Berendes, can you briefly describe your
18 current occupation?

19 A. I'm self-employed. I feed cattle and I farm.

20 Q. How long have you had that occupation?

21 A. Since 2003.

22 Q. Mr. Berendes, are you familiar with an
23 individual named Patrick Shudak?

24 A. Yes.

25 Q. Can you describe how you met Mr. Shudak?

1 A. Through a friend of a friend, a John Schnaible
2 or Schnaible -- I don't know exactly how you pronounce
3 it -- introduced me to him.

4 Q. Did Mr. Shudak discuss an investment opportunity
5 with you after you met him?

6 A. Yes.

7 Q. Prior to discussing that investment opportunity,
8 did you have an existing relationship with Mr. Shudak?

9 A. No.

10 Q. Can you describe the investment opportunity that
11 you spoke of with Mr. Shudak?

12 A. Well, I was told that I would be given a note
13 that would bear 14 percent interest, and that in one
14 year I would get my principal and interest back or I
15 could have a portion of this land investment that he had
16 talked about.

17 Q. Did you in fact -- well, strike that. Let me
18 ask one more question.

19 How did Mr. Shudak describe his role in this
20 enterprise?

21 A. Well, how did he describe his involvement.
22 Well, he seemed to be ahead of the thing and was
23 actively engaged in the purchase of the property and the
24 funding thereof.

25 Q. Did he describe the role of a Mr. Alan Thome to

1 you before you invested?

2 A. No, sir.

3 Q. Your discussions about the investment then were
4 primarily with Mr. Shudak?

5 A. Correct.

6 Q. Did Mr. Shudak describe to you how your money
7 would be used if you chose to invest in this enterprise?

8 A. Just that they were going to use it to secure
9 the underlying land that he was talking about.

10 Q. Did he describe what they were going to do with
11 the underlying land?

12 A. Well, it sounded to me like they were going to
13 turn it. In other words, resale it.

14 Q. So you expected them to turn the property.

15 Did you have a time frame of when you expected
16 that to happen?

17 A. All I know, sir, I had no idea other than the
18 fact that I was told within one year I would have my
19 money back with interest.

20 Q. Okay. And what was the interest rate you were
21 expecting?

22 A. 14 percent.

23 Q. Okay. Mr. Berendes, did you in fact invest with
24 Mr. Shudak?

25 A. Yes.

1 Q. And with which entity did you invest?

2 A. Two separate ones. REBS, LLC and Heartland
3 Livestock, LLC.

4 Q. I poorly phrased that question when I said
5 invest with Mr. Shudak.

6 Did you invest in a company of Mr. Shudak's?

7 A. You know, sir, to be honest with you, I don't
8 know. I gave him the money. I don't know what company
9 it went in, don't recall.

10 Q. Okay. We'll get back to that, we have some
11 investor documents in front of you.

12 Can you first describe how much money you
13 invested?

14 A. Between the two companies, 100,000.

15 Q. Okay. When you say between the two companies,
16 are you referring to your two companies?

17 A. Yes.

18 Q. The ones you just described, REBS and Livestock?

19 A. Correct.

20 Q. How much did each of those companies invest?

21 A. 50,000 each.

22 Q. Mr. Berendes, we provided you with an Exhibit
23 S-18. Do you have that in front of you?

24 A. S-18.

25 Q. The first page of Exhibit S-18 is entitled Note.

1 A. Oh, yes.

2 Q. Okay. If I'm reading this correctly, it says
3 that for value received Parker Skylar & Associates, LLC,
4 the maker, promises to pay to the order of RBBS, LLC?

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. Do you recognize the signature on the bottom of
9 that page?

10 A. Well, when I say do I recognize it, it looks to
11 me like Pat Shudak, is what I know.

12 Q. Do you recognize this as the note you received
13 in exchange for your investment?

14 A. Yes, I would guess it is.

15 Q. Similarly, the next page of this document is
16 simply a signature page, but perhaps it will refresh
17 your memory.

18 Do you at one time remember how many units of
19 Parker Skylar you subscribed to?

20 A. To be honest with you, I see it's one and a
21 half. It may very well have been there. I wasn't
22 really much interested in the units, because I did not
23 intend to do anything but put up the money for a year
24 and get my money back, so...

25 Q. Okay. Similarly, go ahead and turn to the third

1 page. You'll see at the bottom of that there's a page
2 number, ACC2732; is that correct?

3 A. 2732, yes.

4 Q. Okay. Do you recognize this as the note you
5 received in exchange for your investment in the
6 Heartland Livestock?

7 A. Yes. Yes.

8 Q. Do you recognize the maker of this note as
9 Parker Skylar & Associates?

10 A. Well, yes. I see above Pat's signature that's
11 what it says, yes. Yes.

12 Q. Okay. Let me ask a little bit about some of
13 your expectations of this.

14 How was Parker Skylar supposed to use your
15 money?

16 A. I was told they were using the money to secure
17 the property.

18 Q. Okay. Did you give Mr. Shudak or Parker Skylar
19 permission to use your funds for any other purpose?

20 A. No.

21 Q. Did you give -- did you know if Mr. Shudak --
22 did you expect Mr. Shudak to receive a salary
23 compensation for his work in Parker Skylar?

24 A. No.

25 Q. Did you have an expectation as to how Mr. Shudak

1 would be paid for his role in Parker Skylar?

2 A. I had no expectation whatsoever. I didn't know
3 and I didn't care.

4 Q. Okay. Did, prior to investing, did Mr. Shudak
5 disclose to you whether he was going to invest any of
6 his own cash into Parker Skylar?

7 A. He told me he already had invested cash of his
8 own in it.

9 Q. Did you expect him to make any loans to Parker
10 Skylar?

11 A. I had no reason to believe he would or would
12 not.

13 Q. When you were deciding to invest, did Mr. Shudak
14 discuss any risks of the investment?

15 A. He told me that there had been an appraisal on
16 the property. He was going to be able to buy it at 40
17 to 50 percent of that appraisal, and so that by and
18 large there would be no risk to my investment to get
19 this thing secured.

20 Q. At the time you invested, did anyone from Parker
21 Skylar ask you if you were an accredited investor?

22 A. I do not recall.

23 Q. Do you know if you were an accredited investor
24 at the time of your investment?

25 A. I was not.

1 Q. And can you describe any of your previous
2 experience investing in real estate?

3 A. Farm real estate in Iowa. That's, I have bought
4 and owned it from time to time.

5 Q. Do you have --

6 A. And I sold it from time to time.

7 Q. Do you have any experience in residential real
8 estate development?

9 A. No.

10 Q. At the time you invested, did you expect to
11 participate in the management of Parker Skylar?

12 A. No.

13 Q. And who did you understand would be managing
14 Parker Skylar?

15 A. I had no idea.

16 Q. At any time, did Mr. Shudak or Parker Skylar
17 provide you with any lists of investors?

18 A. Yes. I believe they did and that's one of the
19 reasons why I thought the investment might be all right.
20 There were other investors up here. I'm talking, when I
21 say up here, in Iowa and Nebraska, that they showed me a
22 list of people. Mr. Schnaible told me of some people
23 that had invested in it.

24 Q. Did they tell -- oh, excuse me.

25 A. I do not recall any of the names in particular,

1 no.

2 Q. Okay. Did Mr. Shudak or Parker Skylar provide
3 you with any financial statements or accounting records?

4 A. You know, he gave me enough paper to choke a
5 horse, to which I said listen, I'm only interested in
6 one thing, and that is, you're telling me if this is
7 cleared, that's all I need to know, is that I'll invest
8 this money for one year, then I will get my money back
9 with 14 percent return, is that right? He said yes. I
10 said then I am not going to read 50 pages of documents.

11 Q. As a member of Parker Skylar, did you ever
12 participate in any membership meetings?

13 A. For Parker Skylar, no.

14 Q. Do you remember ever seeing any membership
15 resolutions?

16 A. No.

17 Q. Do you remember participating in any member
18 votes?

19 A. No.

20 Q. Do you remember any decisions being put in front
21 of the members for votes?

22 A. No.

23 Q. And finally, have you ever received any return
24 on your investments in Parker Skylar?

25 A. No.

1 Q. Okay. And your investment, just to summarize,
2 was a total of 100,000; is that correct?

3 A. Yes.

4 Q. You received no principal payments, no interest
5 payments?

6 A. Nothing.

7 MR. MILLECAM: No further questions.

8 ALJ STERN: Okay. Mr. Schulman.

9 Mr. Berendes -- how do you pronounce your name?

10 THE WITNESS: Berendes.

11 ALJ STERN: Berendes. The attorney for
12 Mr. Shudak is going to ask you some questions now.

13

14 CROSS-EXAMINATION

15 BY MR. SCHULMAN:

16 Q. Good afternoon, Mr. Berendes. My name is Brian
17 Schulman and, as the judge said, I am counsel for
18 Mr. Shudak. I just have some follow up questions for
19 you.

20 You said that you were introduced to Mr. Shudak
21 by an individual named Mr. Schnaible; is that correct?

22 A. Correct.

23 Q. How do you know Mr. Schnaible?

24 A. He was a friend of a gentleman by the name of
25 Tim Harms who was working for me at the time.

1 Q. And when was it, as best you recall,
2 Mr. Schnaible approached you?

3 A. Sometime in the spring of 2008, to the best of
4 my recollection, but I don't keep those kind of records.

5 Q. Okay. If it might help, I'm looking at your,
6 the notes for your investment, which were in January of
7 '09. Does that help you peg when Mr. Schnaible --

8 A. Then it would have probably not been until the
9 fall, because I only heard about it before my
10 investment, about 30 or 60 days prior to my investment.
11 So it would have been sometime in that time frame.

12 Q. And what did Mr. Schnaible say to you when he
13 met with you?

14 A. Just that he had ran across a gentleman from
15 Arizona who was a land investor down there, who had a
16 chance to buy a piece of property that looked like it
17 had great potential, that he was looking for some
18 investors to secure the buying of that property, and
19 that's pretty much it.

20 Q. Then how was it that you were put in touch with
21 Mr. Shudak?

22 A. Mr. Shudak and Mr. Schnaible came over to my
23 office.

24 Q. In Iowa?

25 A. Yes, sir.

1 Q. And then that's when they -- did they both speak
2 at that meeting?

3 A. Yes, sir.

4 Q. What, what's your best memory of what
5 Mr. Schnaible said at that meeting?

6 A. This is the gentleman I was talking to you about
7 and I'll let him take over. That's about all he said.

8 Q. And then as I understand your testimony, most of
9 what you were focused on, or if not all of what you were
10 focused on in your discussions with Mr. Shudak,
11 concerned the promissory note?

12 A. Correct.

13 Q. And you didn't have much interest in the LLC
14 units?

15 A. No, sir.

16 Q. Did you understand that there was a risk that
17 you would not get paid back on your note?

18 A. I asked him specifically if there was any risk
19 involved with this. He said if they got the money
20 raised, absolutely none.

21 Q. And do you know whether they, they got the money
22 raised?

23 A. I have no, I have no clue. I just assumed when
24 I had heard that they had bought the property that they
25 had gotten it done, but I did not know. I never got any

1 further contact from Mr. Shudak at all. I called
2 Mr. Schnaible a couple of times to ask what was going
3 on, and he seemed as in the dark as I was, so...

4 Q. Have you been involved in any discussions with
5 the other investors in Parker Skylar about what to do
6 with the property?

7 A. Parker Skylar, I'd have to say no. There's
8 another entity that has, that tried to pick up the
9 pieces, but Parker Skylar, no.

10 Q. Is that other entity 1900 Investors, LLC?

11 A. Yes, sir.

12 Q. Are you a member of 1900 Investors, LLC?

13 A. Yes, sir.

14 Q. Do you know if you're still a member of Parker
15 Skylar?

16 A. I have no idea.

17 Q. Were you aware that there were conversations and
18 dialog taking place in 2009 among investors about
19 selling the property to get your money back?

20 A. In Parker Skylar, no.

21 Q. Well, in general, were you aware of any
22 discussions taking place among investors in 2009 about
23 selling at least some of the property in Bisbee in order
24 to get your money back?

25 A. I don't know the exact date, but of course when

1 1900 Investors was formed, yes, that was our primary
2 focus is to get it sold.

3 Q. Right. But, okay, let me try to -- let's just
4 talk in general about before 1900 Investors was formed.

5 A. I have no idea. As I told you, I had no contact
6 with anybody about Parker Skylar. Nothing.

7 ALJ STERN: Can I interject? This is Judge
8 Stern.

9 What was your last, if you can recall,
10 approximately when was the last time you had any contact
11 with anybody about this, not including the people here
12 today.

13 THE WITNESS: About Parker Skylar?

14 ALJ STERN: Yes, sir.

15 THE WITNESS: I have had no contact with anybody
16 about Parker Skylar.

17 ALJ STERN: Since when?

18 THE WITNESS: Since around 2009, whenever it is
19 I invested the money. That was the last time I heard
20 anything about it. And at the time, to be honest with
21 you, Parker Skylar was not on my radar screen. I only
22 knew I was giving the money to Pat Shudak.

23 ALJ STERN: Okay. Go ahead, Mr. Schulman.

24 BY MR. SCHULMAN:

25 Q. I'll represent to you, Mr. Berendes, that 1900

1 Investors was organized in approximately, in
2 February 2010. Okay?

3 A. Okay.

4 Q. So at that point, did you participate or have
5 knowledge of any conversations among the members of 1900
6 Investors about selling the property?

7 A. Yes.

8 Q. Tell me what you recall about those discussions.

9 A. Well, just that a payment was due on the
10 property, which they called 1900, that's all I know it
11 by, and that they needed to raise some money to make a
12 payment or otherwise the whole thing would go into
13 default. So if we were going to try to make a silk
14 purse out of a sow's ear, we had to come up with some
15 money to make that payment. That's the first I knew of
16 anything.

17 Q. I appreciate that answer. Let me just follow up
18 with, specifically, do you recall any discussions about
19 selling the property around February 2010?

20 A. I answered yes, I did. That was our primary
21 focus, to get it sold.

22 Q. Okay. And do you know if the property was
23 listed in February 2010?

24 A. I have no idea.

25 Q. Do you have any idea what efforts were made by

1 anyone to sell the property after February 2010?

2 A. I know there was efforts. What exactly was
3 done, I don't know. I'm not down there. I've never
4 visited down there, never seen the property, so...

5 But I surmised, and I say surmised, that, of
6 course, we were trying to get it sold.

7 Q. Are you aware of any discussions among the
8 investors in 1900 Investors about a decision to not sell
9 the property and instead to continue to hold on to it?

10 A. There was discussions held that I was privy to
11 on the phone about that, but there was two camps; one
12 that strictly wanted it sold, and one that said there's
13 no way we could get our money out of it at this time
14 because real estate wasn't selling, that perhaps we
15 ought to look about developing it. To which, the vast
16 majority said no way, we're not developers.

17 Q. So it's your understanding that the vast
18 majority of the investors in 1900 Investors actually
19 wanted to sell the property?

20 A. Yes.

21 Q. Was that what your preference was?

22 A. Yes.

23 Q. You understand that the property has been held
24 and continues to be developed?

25 A. By whom?

1 Q. By 1900 Investors and Cochise County.

2 A. Yes. I understand that.

3 Q. Okay. That is not the course that you would
4 have preferred?

5 A. No. I wanted my money back. That's why I put
6 it in. One year.

7 Q. You were asked some questions by Mr. Millecam
8 about being an accredited investor.

9 Do you know what the term accredited investor
10 means?

11 A. Yeah. I think you have to have, I think by my
12 recollection, you have to have an income of over 200,000
13 and a net worth of over a million dollars.

14 Q. If you'll -- we don't have a full set of your
15 investment documents, but if I could ask you to turn
16 back to Exhibit S-18, which is what you were looking at
17 before.

18 A. Okay.

19 Q. And we can just look at one of these pages. If
20 you turn to the second page, which has the number
21 ACC002731 at the bottom.

22 A. Okay.

23 Q. Do you see paragraph 3 at the top where, where
24 the caption reads, Suitability of the Investor?

25 A. I see it now, yeah.

1 Q. Do you see it says the units may be purchased
2 only by, quote, accredited investors, end quote?

3 A. I see that now, yes, sir.

4 Q. That's your signature just two paragraphs below?

5 A. Yes, sir.

6 Q. Did you read this document before you signed it?

7 A. No.

8 Q. Would Mr. Shudak have had any way to know
9 whether or not you were an accredited investor or not,
10 other than what you represented to him?

11 A. No.

12 MR. SCHULMAN: I have no further questions, Your
13 Honor. Thank you.

14

15 EXAMINATION

16 BY ALJ STERN:

17 Q. This is Judge Stern again.

18 If I understood your earlier answer to me, sir,
19 you really haven't had much dealings at all since early
20 2010?

21 A. With Mr. Shudak?

22 Q. Yes, sir.

23 A. None.

24 Q. Are you even in contact with any of the investor
25 group that remains, the 1900, LLC?

1 A. Yes, sir. I have been e-mailed and have talked
2 to Marty -- oh, what's Marty's last name -- from time to
3 time about it, yes, sir.

4 Q. So you're just sort of hoping things work out?

5 A. Well, at this point where I'm at right now, sir,
6 there isn't much more I can do from up here.

7 Q. Okay.

8 A. Once the initial, once the initial note was
9 gone, it was, not much I could do.

10 Q. Okay. Did you give, did you, somehow somehow,
11 give Mr. Shudak a check for 100,000 or two separate
12 checks for a 100,000?

13 A. Two separate checks, one from each company.

14 Q. Okay. Did you just mail them down to his
15 company in Arizona?

16 A. He took them with him, as I recall.

17 Q. Oh, this was up in Iowa that you --

18 A. Yes, sir.

19 Q. I see. How many people attended this meeting
20 with Mr. Shudak? Do you recall?

21 A. It was just he and I and Mr. Schnaible.

22 Q. Was Mr. Schnaible a friend of yours?

23 A. As I said, he was a friend of a gentleman that
24 was working for me.

25 Q. Oh, I see. So Mr. Schnaible was from Iowa too?

1 A. I believe Mr. Schnaible is from Nebraska.

2 ALJ STERN: Okay. All right. I don't think I
3 have any other questions.

4 Any redirect? Mr. Millecam, are you going to
5 ask him any more questions?

6 MR. MILLECAM: Just a couple.
7

8 REDIRECT EXAMINATION

9 BY MR. MILLECAM:

10 Q. Mr. Berendes, did you sign your investment
11 documents at the same time you handed the checks to
12 Mr. Shudak?

13 A. As I recall, and I say as I recall, it was five
14 years ago, I don't remember. I think so, though, yes.

15 ALJ STERN: Anything else?

16 MR. MILLECAM: No. No further questions.

17 ALJ STERN: Okay. Mr. Berendes, thank you for
18 calling in today.

19 Unless, Mr. Schulman, you don't have anything
20 else, do you?

21 MR. SCHULMAN: No.

22 ALJ STERN: You're excused, sir. Thank you.

23 THE WITNESS: Okay. Thank you.

24 ALJ STERN: Okay. I think that phone goes off
25 when he hangs up.

1 Do you have any other witnesses available today?

2 We have some time.

3 MR. MILLECAM: Yes. We'll have our fact witness
4 accountant, Andrea Fields. She's coming over right now.
5 She'll be here in just a few minutes.

6 ALJ STERN: Okay. We'll go off the record while
7 we're waiting.

8 (Recess taken from 1:50 p.m. to 1:53 p.m.)

9 ALJ STERN: Okay. Returning to the record.
10 Mr. Millecum, do you want to call your next witness?

11 MR. MILLECAM: Yes. The Division is calling
12 Andrea McDermitt-Fields, an accountant for the
13 Securities Division.

14 ALJ STERN: Do you want to come forward at the
15 witness stand there and be sworn in, please?

16

17 ANDREA MCDERMITT-FIELDS,
18 Called as a witness on behalf of Staff, having been
19 previously sworn by the Certified Reporter to speak the
20 truth and nothing but the truth, was examined and
21 testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. MILLECAM:

25 Q. Can you state your full name for the record?

ARIZONA REPORTING SERVICE, INC. (602) 274-9944
www.az-reporting.com Phoenix, AZ

1 A. Yes. Andrea McDermitt-Fields.

2 Q. Ms. McDermitt-Fields, where are you currently
3 employed?

4 A. I'm currently employed for the Arizona
5 Corporation Commission Securities Division.

6 Q. And what is your current position with the
7 Division?

8 A. I'm a forensic accountant.

9 Q. Can you describe, briefly describe your
10 education and employment backgrounds?

11 A. Well, prior to coming to the Commission, I
12 worked for almost 23 years in internal audit where I
13 reviewed financial information, operating activity. And
14 then prior to that I had about two and a half years in
15 public accounting.

16 Q. Ms. Fields, during the course of your employment
17 with the Securities Division did you participate in the
18 investigation of Patrick Shudak and Parker Skylar &
19 Associates?

20 A. I did.

21 Q. Can you describe the nature of your
22 participation with respect to that investigation?

23 A. Well, my primary role in the investigation is to
24 assist in the review of financial documents as they
25 relate to alleged violations of the Securities Act. And

1 so I did that by reviewing bank statements, interviews,
2 and related documents.

3 Q. In the course of the Division's investigation of
4 Parker Skylar, did it subpoena any bank records for
5 Parker Skylar, the respondents?

6 A. Yes.

7 Q. You have in front of you what the Division has
8 marked as S-35, S-51, S-52 and S-53b. Can you please
9 pull those out?

10 A. S --

11 Q. 35, S-51, S-52, and S-53b.

12 ALJ STERN: 53b?

13 MR. MILLECAM: 53b.

14 THE WITNESS: Okay.

15 BY MR. MILLECAM:

16 Q. Do you recognize these exhibits as bank
17 responses to the Division's subpoenas in the matter of
18 Parker Skylar?

19 MR. SCHULMAN: Your Honor, I just, I object to
20 these questions being asked in the aggregate on all four
21 different exhibits, which I'm flipping around trying to
22 connect. I don't mind him, obviously, asking the
23 questions to lay foundation, but if he's going to talk
24 about all four at the same time I want to make sure I
25 have an opportunity to get them all in front of me

1 before he starts asking his questions.

2 ALJ STERN: Right. Are we going to be talking
3 about all four all at once, or one at a time?

4 MR. MILLECAM: Yes. But we're primarily going
5 to be referring back to them. We are not going to be
6 flipping back to individual cases except in the case of
7 Exhibit S-52.

8 ALJ STERN: Okay. Well, let's see what happens,
9 Mr. Schulman. If it's too complicated you'll be able to
10 voice your objections.

11 BY MR. MILLECAM:

12 Q. Okay. Let me ask first if you recognize Exhibit
13 S-35.

14 A. I do.

15 Q. And what is it?

16 A. S-35 is an exhibit and a response from JPMorgan
17 Chase regarding records that we requested from them.

18 Q. Did any, did JPMorgan Chase provide any
19 documents when it responded with this affidavit?

20 A. They did, and they have included an inventory,
21 which is marked our number 52 and 53.

22 Q. So you recognize Exhibits S-51 and 52 as
23 documents that came along with this affidavit responsive
24 to the subpoena?

25 A. Yes, I do.

1 MR. MILLECAM: Okay. Your Honor, we're going
2 move that Exhibits S-35, S-51, and S-52 be admitted into
3 evidence.

4 ALJ STERN: You're not dealing with S-53b?

5 MR. MILLECAM: I'll deal with it in just a
6 second because it has separate affidavit and documents.
7 Mr. Schulman wanted to know how they were all related
8 and connected, and I thought this would be easier.

9 ALJ STERN: Okay. S-35, S-51, and S-52 you're
10 now saying. And this is all materials related to
11 JPMorgan Chase Bank, correct?

12 MR. MILLECAM: Yes. Their response to the
13 Division's subpoena.

14 ALJ STERN: Okay. Mr. Schulman, do you need a
15 minute?

16 MR. SCHULMAN: Yes. Just give me one minute.

17 ALJ STERN: Okay. Take your time.

18 MR. SCHULMAN: No objections.

19 ALJ STERN: Okay. Exhibits S-35, S-51, and S-52
20 are hereby admitted into evidence.

21 (Exhibits S-35, S-51, and S-52 were admitted
22 into evidence.)

23 BY MR. MILLECAM:

24 Q. Ms. McDermitt-Fields, can you take a minute to
25 look at S-53b?

1 Do you recognize Exhibit S-53b?

2 A. I do.

3 Q. Can you describe what it is to us?

4 A. Again, these are bank documents from JPMorgan
5 Chase, including bank inventory of what they provided us
6 on No. 562 and 563, and on 19, on 1937. So these are
7 all documents from JPMorgan Chase.

8 Q. These are documents provided in response to the
9 Division's subpoena for Parker Skylar bank records?

10 A. Yes, they are.

11 Q. Do you recognize Exhibit S-53b as including
12 detailed requests to the subpoena?

13 A. Yes. These included detailed requests that I
14 would have made.

15 MR. MILLECAM: Your Honor, these are affidavits
16 of, as she described, these are affidavits of custodian
17 of records along with bank documents that were included.
18 We're going to move that Exhibit S-53b be admitted into
19 evidence.

20 ALJ STERN: Mr. Schulman, take your time.

21 MR. SCHULMAN: Well, Your Honor, I just, I'm
22 looking at Bates No. ACC2524, which is, which I think is
23 part of the, which is part of the 53b, I think.

24 ALJ STERN: Okay. I see it. Yes, sir.

25 MR. SCHULMAN: And that is a letter with,

1 appears to be an inventory list. So it seems to be a
2 whole different correspondence and response.

3 ALJ STERN: Mr. Millecam, what's the story here?
4 Yeah, it looks like the one letter is April 22nd, 2011
5 from JPMorgan Chase, somebody named Barbara Montgomery.
6 The other letter is dated 11/18/2011. That's the one he
7 referred to as Bates Stamped 2524 on it.

8 BY MR. MILLECAM:

9 Q. Ms. McDermitt-Fields, does this exhibit contain
10 separate affidavits of custodian of records of JPMorgan
11 Chase?

12 A. Yes, it does.

13 Q. Did JPMorgan Chase reply more than one time to
14 our subpoena requests?

15 A. Yes.

16 Q. Why did they reply on these later times?

17 A. I would have requested additional documentation
18 to supplement the bank statements and provide detailed
19 information on the transactions.

20 Q. The documents in this exhibit that come after
21 the affidavits of the custodian of records, are those
22 the additional detail the Division requested in its
23 subpoenas?

24 A. Yes.

25 Q. So it's your testimony that you recognize this

1 to be three separate affidavits of custodians followed
2 by documents that came in along with those affidavits
3 from the custodians?

4 A. Right. There are two affidavits and
5 certifications, so yes.

6 MR. SCHULMAN: Your Honor, I just want to make
7 it clear for the record. I'm not going object to the
8 admissibility of these exhibits. However, I have not
9 seen the subpoenas. So I don't know what these
10 documents were being produced in response to. So I just
11 want to reserve all of my objections with respect to how
12 these documents are going to be used and what
13 conclusions the Division may put forward with respect to
14 these documents. But for purposes of admitting these
15 documents, these exhibits as, as bank records as they
16 appear to be, I'm not going to object to their
17 admissibility.

18 ALJ STERN: Okay. We have admitted the other
19 three. Exhibit S-53b is now admitted.

20 (Exhibit S-53b was admitted into evidence.)

21 ALJ STERN: With that, go ahead, Mr. Millecam.

22 BY MR. MILLECAM:

23 Q. Ms. McDermitt-Fields, as part of your
24 responsibilities did you have a chance to look at the
25 subpoenas that the Division prepared and issued onto

1 Chase Bank?

2 A. I did.

3 Q. And you reviewed the documents that were
4 responsive to that subpoena, correct?

5 A. Yes, I did.

6 Q. And does that include the documents that are
7 before us in the exhibits we just looked at as S-35,
8 S-51, S-52 and 53b?

9 A. Yes.

10 Q. Ms. McDermitt-Fields, can I have you take a look
11 at the first, the first two pages of Exhibit S-52.
12 Let's start with the second page of that exhibit first.
13 You'll see down at the bottom that's ACC000474.

14 Do you see that document in front of you?

15 A. Yes, I do.

16 Q. Do you recognize this document?

17 A. Yes. This is the signature card from Washington
18 Mutual, which is JPMorgan Chase, for the business
19 account ending 290-3, Parker Skylar & Associates.

20 Q. Who does this document list as the contact
21 person on this account?

22 A. The signer on this account is Patrick Shudak.

23 Q. In what capacity is he signing?

24 A. He is the sole managing member.

25 Q. Can you go ahead and take a look at the

1 paragraph that's numbered paragraph two in this? This
2 paragraph describes, I believe this paragraph describes
3 what authority the signer has.

4 Can you go ahead and read that paragraph for us?

5 A. "Withdrawals or transfer transactions may be
6 paid by Bank on the authorization on any one account
7 owner or signer even if you have given any contrary
8 instructions. Depositor agrees that any one account
9 owner or signer, if more than one, may authorize Bank to
10 open or provide other accounts, products, or services
11 from time to time in the same ownership capacity.
12 Further, Depositor agrees that any one account owner or
13 signer, if more than one, is authorized to endorse,
14 cash, or deposit any check or draft payable to any of
15 them."

16 Q. So can you maybe translate the significance of
17 that to us?

18 A. Well, the significance of this document is that
19 it gives the signer the authority to transact business
20 on this account so this person can deposit, withdraw,
21 transfer, and do other activities as it relates to this
22 account.

23 Q. Ms. McDermitt-Fields, can you flip to the first
24 page of this exhibit, being ACC473.

25 Based on this page and the one we just looked

1 at, did Mr. Shudak remain a signer of the account at all
2 times relevant to your review?

3 MR. SCHULMAN: Objection, Your Honor.
4 Foundation. The document is signed in April 2009 and
5 he's asking the witness if, based on this one document,
6 she can testify that he remained a signer. Basically,
7 I'm not even sure of the time period he is referring to.
8 BY MR. MILLECAM:

9 Q. Ms. McDermitt-Fields, what was the time frame
10 that you reviewed when you looked at the financial
11 documents of Parker Skylar?

12 A. I reviewed the time frame of January 1, 2008
13 through December 31st, 2009.

14 Q. Based on the documents you reviewed, did
15 Mr. Patrick Shudak remain a signer on these accounts
16 during that time frame?

17 MR. SCHULMAN: Objection. Foundation.
18 What documents did she review that would even,
19 even inform her opinion on that topic?

20 MR. MILLECAM: Well, my first question in this
21 was based on the page we just read where he actually
22 signed, and it indicates he is a signer. And my next
23 question was based on the one we are looking at now in
24 conjunction with that one where he is also a signer and
25 is listed as Patrick Shudak.

1 ALJ STERN: I think the document speaks for
2 itself. So I'll overrule your objection.

3 Go ahead.

4 BY MR. MILLECAM:

5 Q. Ms. McDermitt-Fields, as part of your
6 investigation and part of your responsibilities in this
7 matter, did you review any nonfinancial documents
8 associated with the investigation?

9 A. Well, I reviewed related documents, which would
10 be the investment purchase agreements, promissory notes,
11 mortgage agreements, those types of things.

12 Q. Did you review -- I believe you have in front of
13 you Exhibits S-16 through S-33.

14 ALJ STERN: You said S-16 through --

15 MR. MILLECAM: Through S-33.

16 THE WITNESS: Yes, I did.

17 BY MR. MILLECAM:

18 Q. So you recognize those documents?

19 A. I do.

20 Q. You have reviewed those; is that correct?

21 A. I have reviewed these documents.

22 Q. Ms. Fields, are you aware of whether the
23 Division issued a subpoena -- I'm sorry. This is still
24 in a similar vein of nonfinancial documents you reviewed
25 as part of your investigation.

1 Are you aware of whether the Division issued a
2 subpoena to the respondents in this matter?

3 A. Yes, I am.

4 Q. Did you at any time become aware of their
5 response to that subpoena?

6 A. Yes, I did.

7 Q. So they did provide documents?

8 A. I reviewed the documents that were provided to
9 me, I believe they're from Mr. Schulman, in response to
10 a request, in response to the subpoena.

11 Q. Let's go ahead and go back to the investor
12 documents that you have in front of you, the S-16
13 through S-33.

14 As you reviewed these documents, did you at any
15 time compile data from these documents into a table?

16 A. I did.

17 Q. Okay. Let's go ahead and pull out what the
18 Division has marked as Exhibit S-57.

19 Ms. McDermitt-Fields, do you recognize Exhibit
20 S-57?

21 A. I do.

22 Q. Did you prepare Exhibit S-57?

23 A. I prepared the schedule, yes.

24 Q. The first column there is described as investor
25 name.

1 Can you describe where the data from that column
2 came from?

3 A. The investor name is a combination of
4 information from the bank statements and the investment
5 agreements.

6 Q. The second column you've listed as investor
7 documents, and below that you say amounts.

8 Can you describe what data is being represented
9 there?

10 A. Yes. These are the cumulative combined amounts
11 for each of the investors shown, which come from the
12 investor documents, investment purchase agreements.

13 Q. So these data are from the investor documents,
14 the documents you reviewed marked as Exhibit S-16
15 through 33?

16 A. Yes, they are.

17 Q. This is simply the purchase price listed in
18 those agreements?

19 A. Yes, it is.

20 Q. I see down there you have a total of 2,142,000.
21 What does that figure represent?

22 A. It represents the total of the investments
23 according to the investment purchase agreements.

24 Q. Ms. Fields, you were also, we also talked
25 earlier about the bank statements, going back to those

1 bank records in detail. You were able to review those
2 as part of your investigation?

3 A. I did.

4 Q. Did you see deposits coming from investors into
5 the bank accounts that you reviewed?

6 A. I did, and I recorded those in the bank records
7 amounts column.

8 Q. That amount there is that, can you describe
9 maybe the documents that amount is based on? For
10 example, the first one we see is 361,000 from Martin
11 Schwank.

12 A. Certainly. These are wires or checks from these
13 individuals that flowed into the bank accounts. And so
14 we actually have their documents showing what they paid
15 for their investment to the extent that they're recorded
16 here.

17 Q. And then your fourth column is labeled,
18 Difference. Can you explain the meaning of that column?

19 A. This just shows the difference between what we
20 were able to identify from the bank account and the
21 actual investment.

22 MR. MILLECAM: Your Honor, we're going to move
23 that Exhibit S-57 be admitted into evidence.

24 ALJ STERN: Any objections, Mr. Schulman?

25 MR. SCHULMAN: Well, yeah. I'm going to object

1 to the foundation of this document because this
2 information is all based on, basically the information
3 that was produced in response to subpoenas that I have
4 never seen. So I have no idea what, I don't have any
5 idea what documents were asked for in the subpoenas or
6 the time period that was covered by those subpoenas.

7 So to the extent that this document purports to
8 represent money in and money out of the accounts and
9 they're going to draw conclusions from this, there has
10 not been foundation made about what these bank records
11 underlying this document, or what time periods they
12 cover or what was asked for. So I object for lack of
13 foundation.

14 ALJ STERN: Well, what do you say, Mr. Millecam?

15 MR. MILLECAM: I earlier asked
16 Ms. McDermitt-Fields what the time frame was for her
17 investigation, if she's seen those subpoenas. We're
18 happy to show Mr. Schulman the copies of those
19 subpoenas.

20 Additionally, the first column is based on
21 documents that have been admitted into evidence, is
22 merely names of investors. The second one is the total
23 of taking data from documents that have been submitted
24 into evidence. And the third we established were the
25 bank records and the exhibits before us.

1 These exhibits have been provided to
2 Mr. Schulman, the bank records before, along with the
3 detail.

4 ALJ STERN: Well --

5 MR. SCHULMAN: Your Honor, if I may. I mean,
6 even in this document there is an explanation difference
7 in one of the columns on the bottom. It says deposits
8 outside review period. I have no idea what that means.
9 I don't know what the review period is, but they seem to
10 be acknowledging in their own document that this
11 information doesn't cover a period that they deem
12 relevant.

13 BY MR. MILLECAM:

14 Q. Ms. McDermitt-Fields, maybe you can explain what
15 that deposit outside the review period refers to.

16 A. Certainly. We reviewed the period of January 1,
17 2008, through December 31st, 2009. When we made that
18 response, there were, there was some activity that
19 occurred outside those time frames. We were able to
20 determine from the information the bank provided us that
21 \$101,000 related to an investor who invested just before
22 our review period. So we have identified that
23 specifically because there was a document to show that
24 deposit.

25 And then the deposit information not provided by

1 the bank, the bank sometimes is unable to provide the
2 documentation that we request, and I have simply lined
3 that out so that it's clear the amount, the amount that
4 we were able to obtain and not obtain.

5 The review period is 1/1/08 through 12/31.

6 ALJ STERN: Well, it seems to be reasonable to
7 me. It seems supported by the documents and even some
8 of the testimony we had here. So I'll admit Exhibit
9 S-57.

10 (Exhibit S-57 was admitted into evidence.)

11 MR. MILLECAM: Thank you, Your Honor.

12 BY MR. MILLECAM:

13 Q. Ms. McDermitt-Fields, we've been talking about
14 the investors fairly generally. I'd like to switch
15 gears and talk about the investors, two investor funds
16 and their experiences.

17 I'm going to go ahead and have you pull out the
18 document that we've labeled as Exhibit S-36.

19 Do you recognize Exhibit S-36,
20 Ms. McDermitt-Fields?

21 A. I do.

22 Q. Did you prepare this exhibit?

23 A. I prepared this exhibit, yes.

24 Q. You've labeled it as Dan -- Parker Skylar &
25 Associates, Dan Curtis, attorney for Craig Swandal.

1 Who is Craig Swandal?

2 A. Craig Swandal is an investor.

3 Q. Okay. And can you describe, essentially what --
4 can you describe this exhibit to us?

5 A. Oh, certainly. This document portrays what
6 happened to one investor's money and how it was used.
7 The investor is Craig Swandal. He invested through his
8 attorney, Dan Curtis, for the period of April 7th, 2008
9 through April 30th, 2008. Mr. Swandal sent Mr. Curtis a
10 total of \$500,000 and instructed him to deposit \$300,000
11 into the Parker Skylar account, which he did.

12 Q. Ms. McDermitt-Fields can I ask you what
13 documents you used to prepare this exhibit?

14 A. Well, I used the bank documents that we've
15 talked about as well as corroborating information, and
16 an interview that we did with Mr. Swandal.

17 Q. Can you turn to the second page of this exhibit?
18 Does this page list the documents that you used to
19 create this exhibit?

20 A. Right. These are all the documents, this is all
21 of the activity that occurred for this time period in
22 this account.

23 Q. The first column where it says Bates numbers, so
24 this would be the Division's system of dating bank
25 documents as they come in?

1 A. Yes. These are the Bates numbers, the statement
2 dates, the date that the transaction cleared the
3 account, the check reference number, the wire reference
4 date, the itemized deposit and/or the check amount, and
5 then payor or payee.

6 Q. Is it fair to say that Exhibit S-36 summarizes
7 those, the bank statements and the other bank documents
8 you received?

9 A. It does summarize it. It shows that after the
10 money comes into the account, that \$190,000 was
11 transferred to Patrick Shudak's personal account, that's
12 the account ending 4245, and that some amount was
13 transferred back, so \$16,000. Additionally, it shows
14 that there were checks and wires that were written, one
15 to Kathy Shudak for \$100,000, another to Timothy Olp,
16 who's an investor. And those are the primary uses of
17 the funds. So transfer out to the personal account
18 over, which Mr. Shudak had authority, and then transfer
19 out to Kathy Shudak and an investor.

20 MR. MILLECAM: Your Honor, we're going to move
21 Exhibit S-36 into evidence.

22 MR. SCHULMAN: Your Honor, there are conclusions
23 drawn on this document, and there are references to the
24 underlying support for those with references to Bates
25 numbers that we haven't, we have not talked about in

1 this hearing. And so to conclude somehow that he has
2 laid, that the Division has laid enough foundation to
3 reach the conclusions that are set forth in Exhibit S-36
4 is, frankly, a folly.

5 If the Division is not going to walk everyone
6 through how they were able to trace, purportedly trace
7 these funds, unless and until they do that, I'm going to
8 object based on foundation and vagueness and -- well,
9 we'll leave it at that. But the point of the matter is
10 taking this timeline and then a summary that follows it
11 without matching this up with actual documentation,
12 clearly lacks any level of foundation.

13 MR. MILLECAM: For starters, the second page
14 says the Bates number is 475. If you look at Exhibit
15 S-52, that is --

16 ALJ STERN: Excuse me.

17 MR. MILLECAM: I'm sorry. That's S-52.

18 ALJ STERN: So you're saying Bates No. 45 is
19 S-52?

20 MR. MILLECAM: It's in Exhibit S-52. That
21 document was provided to Mr. Schulman before this. That
22 document has been admitted into evidence. It came in
23 response to a subpoena from the custodian of records
24 from the bank.

25 Exhibit S-36, flipping back to that, lists that

1 bank statement and the Bates number. It also lists the
2 detail which has also been provided to Mr. Schulman.
3 Exhibit S-36 summarizes this data.

4 I believe the foundation has been laid. We're
5 happy to give Mr. Schulman some time to look at these
6 bank records again. If he sees any noticeable errors,
7 that's fine. But we feel like he's had these documents
8 for several weeks.

9 ALJ STERN: The only thing I have a question for
10 you is the Bates numbers. It's easy enough to look at
11 the Bates numbers, but if you don't know what exhibit
12 they relate to, it would be more helpful if the exhibit
13 maybe was on there also, just for an explanation for
14 somebody looking at it and saying --

15 MR. MILLECAM: That, yes, I see that's a valid
16 point, and that could have aided -- but yes, the Bates
17 numbers in there are consistent with our Bates system
18 that we used when we received the bank documents. If
19 you look at the bank documents that we admitted earlier,
20 you'll see the same Bates system and the same Bates
21 numbers. And those reference documents are in the
22 documents we provided.

23 ALJ STERN: For instance, I'm looking at that
24 Bates number 475, slash, 1498. Now, is that, that's all
25 part of the S-52, I assume?

1 MR. MILLECAM: S-53 will conclude the detail.

2 ALJ STERN: Well, 475 you said was Exhibit S-52.
3 That's why I'm asking. 475, slash, 1500, does that mean
4 that's Exhibit S-52?

5 MR. MILLECAM: Again, I think this gets back to
6 your earlier question, we should have delegated which
7 other exhibit this document could be found in. And I
8 apologize for that inconvenience and confusion.

9 475 and 76 will be in S-52. The higher numbers
10 will be in the documents, the detail documents provided
11 in S-53. If they are not, I, those will be provided.

12 ALJ STERN: So any of those higher numbers are
13 all the details. The lower numbers come out of S-52.
14 Any of them come from S-53? No, I don't think so, do
15 they? The 475/476 numbers are all right out of S-52,
16 right?

17 MR. MILLECAM: Yes, that's correct.

18 ALJ STERN: But then the detail numbers that
19 follow any of those lower numbers are from S-53, is what
20 you're saying, correct?

21 MR. MILLECAM: I believe they are. I'm -- Your
22 Honor, I, if not --

23 ALJ STERN: Except maybe 654. No, that would
24 be --

25 MR. MILLECAM: Your Honor, I believe I can, if

1 Mr. Schulman wants the additional detail, I believe I
2 can put that into an exhibit very easily. We had one
3 prepared that we opted not to use, but we can provide
4 all that detail to Mr. Schulman so he can review and
5 verify these amounts.

6 ALJ STERN: Well, I believe it sufficiently
7 establishes what is related on the preceding page.

8 So over your objection, I guess, Mr. Schulman, I
9 will admit Exhibit S-36, but I will direct the Division
10 to provide Mr. Schulman with a further breakdown of
11 where those items came from.

12 MR. MILLECAM: Yes, Your Honor. We'll provide
13 that to him.

14 (Exhibit S-36 was admitted into evidence.)

15 BY MR. MILLECAM:

16 Q. Looking back at Exhibit S-36, up at the top, if
17 I'm reading it correctly, that shows when deposits were
18 made into the Parker Skylar account?

19 A. Yes. Deposits were made on 4/7 and 4/10.

20 Q. But they were made by Dan Curtis. Can you
21 explain who Mr. Dan Curtis is?

22 A. Mr. Curtis is an attorney for Craig Swandal.
23 Mr. Swandal invested through him, and then instructed
24 him to make deposits into Mr. Swandal's, according to
25 Mr. Swandal's instructions.

1 Q. Can you explain how you know that information?

2 A. I know it because of the interview that we
3 conducted with Mr. Swandal, as well as some
4 corroborating information that we received in the form
5 of communications between Mr. Curtis and Mr. Swandal.

6 Q. So you participated in an interview with
7 Mr. Swandal --

8 A. I did.

9 Q. -- where he described this? So the money comes
10 in, and I see in that first block there it says the
11 beginning balance as of this period. And that beginning
12 balance is 0, correct?

13 A. That's correct.

14 Q. So, in other words, all the money coming in from
15 Mr. Swandal all, that's all the money that was in this
16 account during this time period?

17 A. Except for \$100 that came in this, the activity
18 in this account is entirely Mr. Swandal's money.

19 Q. Okay. And you've identified that \$100 as other
20 sources?

21 A. Yes.

22 Q. I believe you said earlier, but can you again
23 explain the significance of these transfers out of the
24 account?

25 A. Well, the transfers out are going out to

1 Mr. Shudak's personal account for which he has
2 authority, and then there is some amounts that's coming
3 back. These transfers -- that's as much as I can tell
4 you on the transfers. They're going into his personal
5 account and being commingled with the activity that's in
6 that account.

7 Q. Let me go ahead and have you take a look at
8 Exhibit S-38.

9 Do you recognize -- excuse me -- do you
10 recognize Exhibit S-38?

11 A. I do.

12 Q. Up at the top it says Parker Skylar &
13 Associates, Linda Schwank, Martin Schwank, and it looks
14 like trustee, Debra Knick trustee. Who are those
15 persons?

16 A. These are the Schwank family, according to the
17 documents that I looked at. Linda Martin Schwank and
18 Debra Knick, according to the investment agreement, the
19 money came in through the Schwank accounts.

20 Q. Okay. So you prepared this exhibit as well,
21 S-38; is that correct?

22 A. I did.

23 Q. The second page of this exhibit, this lists the
24 documents that you base this on.

25 Can you describe what these documents are?

1 A. Certainly. These are the bank statements. The
2 second page is the bank statement activity exactly as it
3 appears in the bank statement, with the addition of the
4 Bates numbers. By exactly I mean the dates, the
5 transaction dates, the wire information, the check wire
6 date, itemized deposit, and the check amount, as well as
7 the payor/payee come right off the bank statement. And
8 the Bates numbers, as indicated, the first number is
9 going to be the bank statement. The second number is
10 going to be, typically, the detail information.

11 Q. Is it fair to say that Exhibit S-38 is a summary
12 of a bank statement for Parker Skylar's bank account?

13 A. S-38 shows what happened to the Schwank's
14 investment for the period of August 1st, 2008 through
15 August 31st. And again, this was the only activity in
16 this account for this period of time. So it's entirely
17 related to the Schwanks. It shows that they invested a
18 total of \$325,000, and that it went into the Parker
19 Skylar account at a time when the balance was quite low,
20 around \$314. And then the money was transferred and
21 then also wired, or checks were written. So money was
22 transferred out, \$104,000 to four accounts. \$14,000 to
23 Promise Land, \$7,000 to Spirit Graphics, \$15,000 to the
24 Jill Noetzelman account, and \$68,000 to Patrick Shudak's
25 account.

1 Q. What's the significance of those transfers out
2 to those accounts? Were you able to recognize them?

3 A. Well, I know that three of these accounts
4 Patrick Shudak has signatory authority on. That would
5 be his 4245, which is his personal account; Spirit
6 Graphics, which was a printing business that he had; and
7 Promise Land, which relates to a different business
8 venture.

9 Q. We've heard some testimony on Promise Land and
10 Spirit Graphics that he was involved with, but can I ask
11 how you know that he had signatory authority on the
12 accounts?

13 A. On these three accounts I know because I looked
14 at the signature cards from the bank.

15 Q. Those were provided by the bank --

16 A. Those were provided by the bank.

17 Q. -- in response to the subpoena for Parker Skylar
18 accounts?

19 A. Yes.

20 Q. You also reviewed investor documents.

21 Can I have you look over at the right? These
22 would be payments.

23 A. Yes. So to the right it says use of funds.
24 These are actually checks written, or wires out as well
25 as cash out. And so we see in the disbursements on this

1 side, a payment to Church USA of \$15,000. Timothy Olp
2 is the president of Church USA according to Arizona
3 Corporation Commission records. He's also an investor.
4 Timothy or Tim Olp Bible Ministries, again, Tim Olp is
5 an investor. Cochise County Land, LLC is a \$50,000
6 disbursement, which is another business venture. Then
7 there is \$100,000 going to Cochise County 1900, which is
8 the Parker Skylar business venture.

9 Q. When you reviewed investor documents for Parker
10 Skylar, you were able to, can you, as you reviewed those
11 you were probably able to get some grasp of Cochise
12 County 1900's relationship with Parker Skylar. Can you
13 explain that to us one more time, further explain
14 the relationship of the payments to Cochise County.

15 MR. SCHULMAN: Objection, Your Honor. That was
16 a leading question. There's no foundation established
17 that she has any knowledge about the relationship
18 between those entities.

19 ALJ STERN: Could you fill in the blanks a
20 little bit?

21 BY MR. MILLECAM:

22 Q. In your review of the of investor documents that
23 we have before you, Exhibit S-16 through 33, did any of
24 those documents describe Cochise County 1900?

25 A. Yes, they did.

1 Q. Did they describe its relationship to Parker
2 Skylar in any way?

3 A. Can I take a look at one of the documents,
4 please?

5 Q. Yes. Let's go ahead and we can look at the
6 first one there, Exhibit S-16. It's investor documents
7 from Mr. Timothy Banghart. I'll have you turn about
8 three pages into that document with the Bates label
9 4506. Do you see that?

10 A. I do.

11 Q. Okay. Can you go ahead and take a look at
12 paragraph 1.1 under the heading entitled, The
13 Investment? Have you seen this paragraph before?

14 A. Yes, I have.

15 Q. Is it present in any of the other investor
16 documents that you've reviewed?

17 A. Yes, it is.

18 Q. Okay. Does this paragraph discuss Cochise
19 County 1900? If you could, could you take a look at
20 that -- well, maybe let's have you read it, have you
21 read paragraph 1.1 for us.

22 A. Sure.

23 "The Company has been formed to engage in the
24 business of real estate development involving the
25 acquisition, financing, entitlement, development,

1 subdivision, marketing and sale of real property, and
2 portions or lots thereof, consisting of approximately
3 1,900 acres of ranch land (formerly known as the Flying
4 H Ranch, located East of the City of Sierra Vista,
5 Arizona, on Highway 92), in Cochise County, Arizona (the
6 Property), as a Member of Cochise County 1900, LLC, an
7 Arizona limited liability company. Such activities of
8 the Company are hereinafter referred to as the
9 Business."

10 Q. Based on your reading of that paragraph, is the
11 transfer of \$100,000 to Cochise County 1900 consistent
12 with the investment documents you reviewed?

13 A. Yes, it is.

14 Q. Now, you also reviewed documents provided by
15 respondents in this matter; is that correct?

16 A. Yes, I did.

17 Q. Did those documents that you reviewed, and that
18 you're aware of, did those documents include any
19 contracts or agreements between Parker Skylar and
20 Promise Land?

21 A. I do not recall any specific agreements between
22 Promise Land and Parker Skylar.

23 Q. Similarly, do you recall any specific agreements
24 between Parker Skylar and Spirit Graphics?

25 A. No, I do not.

1 Q. Similarly, do you recall any contracts,
2 agreements, loan agreements, of any kind between Parker
3 Skylar and Jill Noetzelman?

4 A. No, I do not.

5 Q. Do you recall any loan agreements or employment
6 salary documents between Parker Skylar and Patrick
7 Shudak?

8 A. The only document that I saw that referenced any
9 compensation was a Parker Skylar operating agreement.
10 It was an unsigned document.

11 MR. MILLECAM: Okay. Give me one minute to look
12 at my notes and see if I have any further questions.

13 Your Honor, first off, I do see something I
14 missed. I need to move that Exhibit S-38 be moved into
15 evidence.

16 MR. SCHULMAN: Your Honor, I object for lack of
17 foundation.

18 ALJ STERN: Okay. I will overrule it. I will
19 admit Exhibit S-38. I think it's sufficient.

20 (Exhibit S-38 was admitted into evidencce.)

21 ALJ STERN: Okay. Where are you going next?

22 MR. MILLECAM: Just a very few quick questions.

23 BY MR. MILLECAM:

24 Q. In your review of these bank documents -- excuse
25 me -- received from Chase Bank, did you receive any

1 documents that shows that Shudak did not have signatory
2 on the Parker Skylar accounts you reviewed for the time
3 period of July 1st through 2009?

4 A. No, I did not.

5 Q. Did you receive any documents showing that he
6 was removed as a signatory?

7 A. No.

8 MR. MILLECAM: Okay. I have no further
9 questions at this time.

10 ALJ STERN: Okay. Mr. Schulman.

11

12 CROSS-EXAMINATION

13 BY MR. SCHULMAN:

14 Q. Good afternoon. Do you go by
15 Ms. McDermitt-Field or just Fields?

16 A. It's McDermitt-Fields.

17 Q. Ms. McDermitt-Fields, let's take a look first at
18 S-57, which was the first chart that we went over.

19 Do you have that in front of you?

20 A. I do.

21 Q. With respect to these line items where there's a
22 difference, I have some questions for you.

23 So let's go down to Gary Bates, for example. Do
24 you see him?

25 A. I do.

1 Q. Okay. So you're showing here that there's an
2 investor amount of \$25,000, correct?

3 A. According to the investment agreements.

4 Q. So this, and that was, my question was what's
5 your basis for that \$25,000 figure?

6 A. The investment purchase agreement.

7 Q. Okay. Do you have any documents from Mr. Bates
8 that shows that he actually paid that amount?

9 A. I have no bank documents.

10 Q. Did Mr. Bates provide you with any documentation
11 to confirm that he actually paid the \$25,000?

12 A. I have from Mr. Bates an interview saying that
13 he paid this amount, but I don't have any other
14 documents that I'm aware of, no. Just the bank
15 documents. So there are none for this.

16 Q. And we don't have Mr. Bates' testimony here, and
17 so we don't have any evidence in the record of Mr. Bates
18 paying the \$25,000, correct?

19 A. Correct.

20 Q. Now, with respect to Mr. Berendes -- well,
21 Mr. Berendes you may know, he just testified. And you
22 are indicating that Mr. Berendes paid \$100,000; is that
23 correct?

24 A. According to the investment agreement.

25 Q. Okay. Would you be surprised if he just

1 testified that that was not the amount he invested?

2 A. I would be surprised if it didn't agree to the
3 investment agreement.

4 Q. Do you have any documentation to support that
5 Mr. Berendes actually paid \$100,000?

6 A. I do not have documentation. I have
7 documentation that he paid \$50,000.

8 Q. Okay. And that \$50,000 is shown as being
9 deposited in the bank account, correct?

10 A. Yes, it is.

11 Q. Okay. With respect to Mr. Banghart, what
12 documentation, if any, do you have to support that he
13 actually invested \$175,000?

14 A. I have documentation that shows he invested
15 \$84,500.

16 Q. But that's the information that you got from the
17 bank records, correct?

18 A. Yes, that's correct.

19 Q. And Mr. Banghart did not produce any evidence to
20 you to show that he actually invested \$175,000?

21 A. I do not recall that he did.

22 Q. With respect to Mr. Lamer, you are, in this
23 document you are saying that the documents, the investor
24 documents reflect that Mr. Lamer invested \$128,000, but
25 the bank records only show 28,000, correct?

1 A. That's correct.

2 Q. Do you have any evidence that Mr. Lamer actually
3 invested \$128,000?

4 A. I don't recall that I have any evidence that he
5 invested 128,000 just the 28 that we picked up in the
6 bank.

7 Q. And Rosan Knapp, K-N-A-P-P, you're referring to
8 an investor document that says that she invested
9 \$100,000; is that correct?

10 A. That's correct.

11 Q. But you don't have any documentary evidence to
12 confirm that she actually did invest \$100,000?

13 A. I do not.

14 Q. And, in fact, there is no bank records of her
15 investing \$100,000?

16 A. There is no bank records showing that she
17 invested \$100,000.

18 Q. With respect to these investors that we looked
19 at, Mr. Bates, Mr. Berendes, Mr. Banghart, Mr. Lamer,
20 and Ms. Knapp, did the Division ask for evidence or
21 proof of their investments from them?

22 A. I would have to review the records, but I
23 believe the answer is yes. When we spoke to -- I'm
24 going to have to reserve my answer.

25 I can tell you that we asked for bank documents

1 from Rosan Knapp through Jerry Gruetzemacher.

2 Q. Okay. Let's -- I didn't realize I hadn't
3 completed this exercise. With respect to Tim and Elaine
4 Olp -- and by the way you lumped together Tim and Elaine
5 Olp and Church USA and Tim Olp Bible Ministries; is that
6 correct?

7 A. Yes, that's correct.

8 Q. And you state there are documents reflecting
9 \$128,000 invested, correct?

10 A. That's correct.

11 Q. But you don't have any bank records to confirm
12 that that amount was actually invested?

13 A. Actually, in this case we do. It's just that
14 this is the item that fell outside the review period.
15 The bank provided that document, although we didn't
16 actually, our review started shortly after. But we have
17 a wire showing Mr. Olp's investment, I believe, of
18 \$100,000.

19 Q. Well, so if I understand it correctly, you
20 actually have bank records showing that 128,000 did
21 actually go into the bank accounts then, correct?

22 A. Yes. What I'm doing here is showing you exactly
23 what the bank records said for the period that I
24 reviewed. So for that period, 1/1/08 through 12/31,
25 this particular one fell just slightly before that

1 period, so I'm acknowledging it here, but it did not
2 fall into that specific period of review.

3 Q. Why did you -- how did you come up with your
4 period of review?

5 A. Period of review is when the majority of the
6 activity took place.

7 Q. Well, you have, this document purports to show a
8 difference of \$466,500 between the amounts of money
9 purportedly invested and the amounts of money that
10 actually went into bank accounts. And over 100,000 of
11 that, which is, which you're the, you're the expert on
12 the numbers, that's a pretty significant chunk of that
13 466,500 isn't it? One-fourth, 25 percent?

14 A. I'm not sure what your question is.

15 Q. Well, my question is isn't this document
16 misleading when it suggests that there's a difference of
17 \$101,000 that were not, were not accounted for in the
18 bank record amounts, but it's simply because of your
19 arbitrarily defined review period?

20 MR. MILLECAM: We are going to object to
21 argumentativeness.

22 ALJ STERN: I believe she's answered your
23 question.

24 Did I understand you correctly? You state that
25 this analysis that you performed here is only for the

1 period January 1st, 2008 to December 31st, 2008?

2 THE WITNESS: Yes. Right at that time period,
3 yes.

4 ALJ STERN: So there's a possibility some of the
5 monies may have not have made it in. But as far as
6 verification purposes, for purposes of knowing how much,
7 let's say, the Commission is going to, if they find that
8 Mr. Shudak violated the Securities Act and they say
9 well, we want to order restitution -- evidence wise, we
10 have bank records that establish, based on this
11 proceeding of only 1.6 million, or thereabouts, versus
12 claims through the investor documents, as you call them
13 here, \$2.1 million or thereabouts was invested.

14 So how does the Commission know what to order
15 for restitution if, assuming in fact, there's an order
16 of restitution? What do we do.

17 THE WITNESS: The information that I provided is
18 to assist in that process. We can say that for those
19 first -- one, two, three, four, five, six, seven,
20 eight -- nine investors that the investment agreements
21 were identical. We can say for Mr. Olp that, although
22 his activity fell outside our review period, which would
23 not be completely unusual, we can also produce a
24 document for him.

25 For the remainder of the individuals, I would

1 have to defer to the Commission.

2 ALJ STERN: I mean, Mr. Banghart, he's a little
3 on the, about half of what he's claiming. Mr. Bates,
4 was he outside that time frame, or --

5 THE WITNESS: In these cases the bank simply
6 wasn't able to provide the documentation to me. So we
7 made a subsequent request for detail, and the bank
8 either was unable to provide, or could not provide or
9 locate the documents, and so that's why we don't have
10 any additional information. That's as much as I can
11 substantiate from the bank records.

12 MR. MILLECAM: Your Honor, excuse me.

13 ALJ STERN: Sir.

14 MR. MILLECAM: I was just going to say that we
15 feel like we've been pretty forthright with what this
16 exhibit is. It says the investor amounts and then it
17 says bank records, the review period was for 2008 where
18 we requested detail and confirmed, if we could, and on
19 occasion people paid before. Mr. Shudak had multiple
20 accounts everywhere. She is simply testifying to here's
21 where we saw a dollar amount come in. And we do
22 anticipate substantiating the other payments and other
23 means. For example, we just heard Mr. Berendes say he
24 did in fact transfer the 100,000. We have interviews --
25 her exhibit shows what the bank records, what came in

1 for the time period for the bank records she has.

2 ALJ STERN: I just still find it somewhat -- I
3 don't know what a good term would be. Usually when you
4 want to order an amount to be paid in restitution, you
5 have a dollar amount that you know is valid and it's
6 been proven. Here we have claims of investments, but no
7 track of the money. Maybe through -- well, I mean
8 there's a number of years now and banks' records aren't
9 always the best either. So we're not entirely sure if,
10 in fact, the monies were invested. That would be
11 helpful if the banks were able to come up with that.

12 I don't know, I don't recall ever seeing
13 something quite like this. Although, I think the
14 Commission's rules in the case of restitution provide
15 that, you know, there can be setoffs. But as far as
16 ordering restitution by the Commission, usually there's
17 a set amount, and then if, in fact, ultimately there's
18 an order of restitution, well, hopefully it's the amount
19 that was invested. So I don't know.

20 MR. MILLECAM: Well, yes, Your Honor, the
21 amount, the 2,142,000 was, first off, taken from the
22 investor documents. You heard testimony from
23 Mr. Schwank that he received those documents, that he
24 corresponded with the other investors, and they
25 confirmed sending those payments. In addition, we do

1 have another witness, and that witness will describe
2 interviews with investors.

3 ALJ STERN: Okay. All right.

4 Do you want to continue, Mr. Schulman?

5 MR. SCHULMAN: Thank you, Your Honor.

6 BY MR. SCHULMAN:

7 Q. Then you have the last two names are Jim
8 Peterson and John Schnaible, and you're showing that the
9 investor documents show no money in and the bank records
10 show no money in, correct?

11 A. That's correct.

12 Q. Why did you include them in your exhibit?

13 A. I found their investment purchase agreements in
14 the documents that I reviewed.

15 Q. So does Exhibit S-57 purport to list all of the
16 investors that you were able to identify in Parker
17 Skylar?

18 A. Yes, it does.

19 Q. So this, then the box below the explanation of
20 difference, deposit information not provided by bank,
21 that's just the aggregate total of the amounts that you
22 have no bank information for?

23 A. That's correct.

24 Q. And when we talk about no bank information, you
25 don't have bank information from Parker Skylar or bank

1 information from the investor, correct?

2 A. I don't believe you provided any bank
3 information from Parker Skylar, and the investors, to
4 this extent, did not, that I recall, yes.

5 Q. All right. Let's turn to Exhibit S-36.

6 Now, as I understand it you were tasked with
7 simply tracking the dollars. You did not do any
8 investigation into how the money was used, correct?

9 A. To the extent that I received information I used
10 that information, but this is really a tracking of the
11 money.

12 Q. Right. So, for example, you don't know on
13 Exhibit S-36, of the \$300,000, you're not here to
14 testify about what amount of that 300,000, whether it
15 was zero or all of it, how much of it was used for the
16 Bisbee property, correct?

17 A. Well, we're referring to Parker Skylar, Cochise
18 County 1900, and the information that I have is on this
19 sheet. I'm not aware that Kathy Shudak is an investor
20 or has any role in that business as I didn't receive any
21 additional information from anyone that would suggest
22 that she had a role in the business.

23 Timothy Olp is an, is an investor. The money he
24 received was from Mr. Swandal. And then the remainder
25 of it transfers into Patrick Shudak's personal account.

1 From this document we cannot tell how that money was
2 spent.

3 Q. Well, let me ask my question again, because I
4 have got a lot of questions for you if you're here to
5 testify about how the money was being used.

6 Are you testifying about how the money that was
7 raised was used?

8 A. I'm testifying where the money went to.

9 Q. Right. So, for example, with respect to Kathy
10 Shudak, there are records produced by the Division that
11 shows that Kathy Shudak did put money into Parker
12 Skylar. Are you aware of that?

13 A. I'm aware that Kathy Shudak put a certain amount
14 of money into --

15 MR. MILLECAM: Object to foundation. Maybe you
16 can point her to those documents.

17 MR. SCHULMAN: Sure.

18 BY MR. SCHULMAN:

19 Q. Do you have Exhibit 54? Do you have Exhibit 54
20 in front of you?

21 A. I do.

22 Q. Do you see that this is a -- have you seen this
23 cash flow analysis?

24 A. I have seen this, yes.

25 Q. And have you analyzed this cash flow analysis?

1 A. I have reviewed this cash flow analysis.

2 Q. Okay. And do you see that there was a, for
3 payment to vendors, there was a deposit from Kathy
4 Shudak for \$60,000?

5 A. Yes, I do.

6 ALJ STERN: Where is that at?

7 MR. SCHULMAN: Your Honor, that is, do you see
8 about a quarter of the way down in that second grouping,
9 the third line down, Deposit Org. Kathy Shudak, \$60,000.

10 ALJ STERN: I see it.

11 BY MR. SCHULMAN:

12 Q. So for all you know these were monies that were
13 simply paid back to, in this case, Kathy Shudak for
14 monies that she put into Parker Skylar? You don't know,
15 that's the point, correct?

16 A. I don't know what the purpose of her activity
17 was.

18 Q. Right. And you don't know that, you don't know
19 that the monies that Kathy Shudak paid in, whether this
20 was just simply a reimbursement to her for money she put
21 into Parker Skylar, correct?

22 A. I don't know that, no. I don't know that.

23 Q. And Tim Olp Bible Ministries, he's another
24 investor, correct?

25 A. That's correct.

1 Q. So he was paid back \$25,000, correct?

2 A. He received \$25,000 in this, in this --

3 ALJ STERN: Could you speak up, please?

4 THE WITNESS: Yes. He received \$25,000.

5 BY MR. SCHULMAN:

6 Q. Right. So that's not money that went into
7 Mr. Shudak's pocket, correct?

8 A. No. It came from Mr. Swandal and went to
9 Mr. Olp.

10 Q. But you don't know the circumstances as to why
11 Mr. Olp was paid \$25,000, correct?

12 A. I don't.

13 Q. And you don't know why \$190,000 purportedly was
14 paid to Mr. Shudak, correct?

15 A. No, I do not.

16 Q. Going back to Exhibit 54, you are aware since
17 you've reviewed this cash flow analysis that Mr. Shudak
18 personally put monies into Cochise County 1900, aren't
19 you? Well, let's look.

20 About four lines down, Pat Shudak puts in
21 \$50,000 on March 17th, 2008?

22 A. Mr. Shudak made a payment from his Spirit
23 Graphic account to First American Title of \$50,000.

24 Q. Right. For Cochise County 1900, correct?

25 A. Yes, that would be correct.

1 Q. And then there are other examples throughout
2 this that I'm happy to go through that show that
3 Mr. Shudak personally made payments on behalf of Cochise
4 County 1900. Are you aware of those payments?

5 MR. MILLECAM: Object to foundation. First off,
6 who prepared this document, and how are you
7 substantiating these payments actually occurred?

8 MR. SCHULMAN: If she disagrees with my
9 characterization of how I'm describing them, she can.

10 ALJ STERN: I'll overrule it. You know, this is
11 just some more confusing try and follow the money.
12 There's a lot of money came in here and lot of money
13 went different places, it doesn't always -- you can't
14 tell.

15 BY MR. SCHULMAN:

16 Q. You are aware that there were payments directly
17 made by Mr. Shudak to Cochise County 1900, correct?

18 A. Can you give me an example?

19 Q. Well, can you answer the question without me
20 giving you an example? Based on -- you were the
21 accountant on this case, correct?

22 A. Yes, that's correct.

23 Q. You reviewed all that financial information
24 provided in this case, correct?

25 A. I did.

1 Q. You saw evidence that Mr. Shudak personally put
2 money into this project, correct?

3 A. I saw evidence of a lot of transferring around.
4 I would really need to look at my detail documents
5 before I feel comfortable answering that. If you have a
6 specific example, I'd be happy to answer that.

7 Q. Did you ever do an analysis to determine how
8 much money Mr. Shudak personally put into the project?

9 A. I do have information in my detail records that
10 show how the money flowed and from whom.

11 Q. And from that analysis we would be able to show
12 possibly how much money Mr. Shudak put into the project
13 personally?

14 A. To the extent that I have bank records and the
15 documentation, yes.

16 Q. Do you know if your analysis has been produced
17 by the Division as an exhibit for this case?

18 A. I do not know that.

19 Q. Let's turn to Exhibit 38.

20 With respect to these items that are under the
21 use of funds, let's start with Tish Selk and go down to
22 Church USA and so on.

23 You don't have any -- do you have any evidence
24 or information that indicates whether or not those use
25 of funds were used for or not for Cochise County 1900?

1 A. I can tell you that \$100,000 went to Cochise
2 County 1900, that's the Parker Skylar business venture.

3 Q. But other than that, you can't draw any
4 conclusions with regard to the use of those funds?

5 A. Only as they're shown here. These individuals
6 were paid, or the money was taken out in cash. That's
7 all I can tell you at this point.

8 Q. So, for example, there is an August 14, 2008
9 line item for Jaburg & Wilk. Do you see that?

10 A. Yes, I do.

11 Q. Do you know that Jaburg & Wilk is a law firm
12 here in Phoenix?

13 A. I do.

14 Q. Do you know whether or not Jaburg & Wilk did
15 legal work for Cochise County 1900?

16 A. I do not.

17 Q. So that item could have been a legitimate
18 expense for Cochise County 1900, correct?

19 A. It could have been.

20 Q. And, in fact, all of these uses of funds could
21 have been legitimate uses of funds for Cochise County
22 1900, you just don't know, correct?

23 A. We didn't receive the evidence that they would
24 or wouldn't be, except for the 1900.

25 Q. So you don't know?

1 A. I don't know.

2 Q. With respect to the transfers of \$104,000, first
3 of all, let's look at Spirit Graphics. Are you aware
4 that Spirit Graphics provided marketing materials for
5 Cochise County 1900?

6 A. No, I'm not.

7 MR. MILLECAM: Object to foundation. Are you
8 going to provide some documents or evidence showing that
9 they did provide those services?

10 MR. SCHULMAN: There's no question pending for
11 him to object to, Your Honor.

12 ALJ STERN: That's true. But we don't know what
13 Spirit Graphics did one way or the other.

14 MR. SCHULMAN: I'll ask a different question.

15 BY MR. SCHULMAN:

16 Q. Do you know whether or not Spirit Graphic did
17 any work on behalf of Cochise County 1900?

18 A. No, I don't know.

19 Q. With respect to Jill Noetzelman, do you know
20 whether or not Ms. Noetzelman put any money, invested
21 any money, or lent any money to either Parker Skylar or
22 Cochise County 1900?

23 A. I would have to look at my detailed records.
24 There was money flowing back and forth, and exactly
25 which account she put that into I would have to look at

1 the detail to see.

2 Q. And then with respect, again, to Mr. Shudak, you
3 don't know whether these were monies owed to him as a
4 payback of loans or monies he received for work he had
5 done on the project, that's not something that you
6 looked into, correct?

7 A. I didn't receive any evidence that would tell me
8 what this is for other than it went into his personal
9 account.

10 Q. Did you ask for any bank documents that you did
11 not receive?

12 A. Yes. There was certain detail that we did not
13 receive.

14 Q. What detail did you ask for that you did not
15 receive?

16 A. It would be, again, I'd have to look at the
17 specifics, but it would relate to, for example, the
18 investor list that we went through where the bank didn't
19 provide evidence that there was a deposit. So that
20 would be an example of an item.

21 Q. So I'm not going to ask you to physically do
22 this exercise, but so that I can do this exercise on my
23 own, while we're on Exhibit S-38, if we look to the
24 second page, so this, the first column on the left,
25 Bates numbers, that's going to refer to a Bates number

1 of a document that you believe has been, is part of one
2 of these exhibits that the Division has produced,
3 correct?

4 A. Yes.

5 Q. And then statement date is the statement date,
6 is the statement that is referenced in the statement
7 date, should that be what is found when that I look at
8 these Bates numbers?

9 A. It is.

10 Q. So the Bates number refers to a page of a
11 statement?

12 A. It does.

13 Q. Okay. And the date transaction cleared, that's
14 going to be reflected in one of the two, one of the
15 documents that is referred to in the first column on the
16 left?

17 A. Yes, it will. It will either be the statement
18 or the detail document.

19 Q. Then the next column says check, slash, wire
20 reference number, and then there's numbers underneath
21 that, sometimes but not always. What do those numbers
22 reference?

23 A. Those are check numbers or wire numbers. They
24 actually appear on the detail document, or sometimes
25 will also appear in the bank statement.

1 Q. But where you have a reference, where there's a
2 number here, you have a corresponding Bates number that
3 should reflect that document?

4 A. That's correct.

5 Q. So, for example, three lines down where you've
6 got check, slash, wire reference number 1051, do you see
7 that?

8 A. Yes.

9 Q. One of the three pages that you've got a Bates
10 number for should have check number 1051?

11 A. Yes, it will.

12 Q. Okay. Check/wire date, that is information that
13 you've gleaned off of the document that we just talked
14 about?

15 A. Yes, it is.

16 Q. Then the deposit is reflected in one of the
17 documents that is listed in the Bates number column?

18 A. Yes, it is.

19 Q. The payee/payor information comes from where?

20 A. It's the same. It's going to come off of the
21 exact description off of the bank statement or the exact
22 description of the check or detail document.

23 MR. SCHULMAN: Thank you. I have no further
24 questions.

25 THE WITNESS: You're welcome.

1 ALJ STERN: Any redirect?

2 MR. MILLECAM: Yes. Just a few questions.

3

4 REDIRECT EXAMINATION

5 BY MR. MILLECAM:

6 Q. Ms. McDermitt-Fields, I asked you earlier if you
7 had reviewed documents provided by our respondents in
8 response to the Division's request to respondents.

9 A. Yes.

10 Q. You indicated that you had reviewed those
11 documents?

12 A. I did.

13 Q. Did any of the documents you reviewed
14 substantiate a vendor agreement with Kathy Shudak?

15 A. No.

16 ALJ STERN: A what? Excuse me. A what
17 agreement?

18 MR. MILLECAM: Any type of agreement. I said
19 vendor. I think he described her as a vendor of Parker
20 Skylar.

21 MR. SCHULMAN: I did not.

22 MR. MILLECAM: Okay. I'm sorry.

23 BY MR. MILLECAM:

24 Q. Did you -- let me rephrase that.

25 Did you receive any contracts or agreements

1 between Parker Skylar and Kathy Shudak?

2 A. No, I did not.

3 Q. Any documents that would allow you to
4 substantiate her relationship to Parker Skylar?

5 A. No.

6 Q. Similarly, on the, on Exhibit S-38, I believe
7 you described one exception was Cochise County 1900 of
8 people receiving payments and transfers -- two
9 exceptions, sorry -- Tim Olp and Cochise County 1900.

10 Did respondents provide any documents that would
11 help you substantiate the relationships of these other
12 persons?

13 A. I'm sorry. Could you ask me the question once
14 again?

15 Q. With the exceptions of Cochise County 1900 and
16 Tim Olp, the parties, the parties receiving payments and
17 transfers, did respondents provide you with any
18 documents that would allow you to substantiate Parker
19 Skylar's relationship to any of these other persons?

20 A. No, they did not.

21 Q. Mr. Schulman had you briefly look at Exhibit 54.
22 You stated that you had seen that exhibit before.

23 A. I have.

24 Q. When you reviewed it did you, did you find that
25 to be a reliable, to be an accurate description of

1 Parker Skylar's expenses, or excuse me, of Cochise
2 County 1900's expenses?

3 A. I did not rely on this entirely. I used it to,
4 to check and review for any corroborating information,
5 but it was not my primary source of information.

6 ALJ STERN: Do you even know whether this
7 document is to be relied upon? What's the basis for
8 relying on it?

9 THE WITNESS: I did not, I did not use it as a
10 source other than to consider whether or not there was
11 any corroborating information. So I did not rely on it.
12 I read it, I reviewed it, and I considered it.

13 ALJ STERN: All right. Go ahead.

14 MR. MILLECAM: Those are all my questions.

15 ALJ STERN: Okay. Anything else, Mr. Schulman?

16 MR. SCHULMAN: Just quickly, Your Honor. Your
17 Honor, do you mind if I just sit here since I have just
18 got this one question?

19 ALJ STERN: Yes.

20

21 RECROSS-EXAMINATION

22 BY MR. SCHULMAN:

23 Q. With respect to Exhibit S-54, if you'll turn.

24 Do you recognize S-54 as an exhibit to

25 Mr. Thome's deposition?

1 ALJ STERN: S-54 is a deposition?

2 MR. SCHULMAN: His EUO.

3 ALJ STERN: Okay.

4 THE WITNESS: I recognize this document. I
5 can't tell you if it came from Mr. Thome's deposition.

6 BY MR. SCHULMAN:

7 Q. Well, do you see that there's an exhibit sticker
8 on the first page that says Exhibit 9, Thome?

9 A. Okay.

10 Q. Did you review Mr. Thome's deposition?

11 A. I did.

12 Q. Do you recall his, do you recall his testimony
13 concerning this cash flow analysis that is attached to
14 the e-mail?

15 A. Not specifically. I do recall that, the
16 testimony, but you would need to give me a more specific
17 question.

18 Q. Well, my question is just meant to be general.
19 Do you generally recall him discussing that he
20 had prepared this cash flow analysis that is attached to
21 the e-mail?

22 A. I do. He generally discussed this document.

23 Q. And do you generally recall that some of these
24 line items were discussed with Mr. Thome in his EUO?

25 A. I generally recall that this document was

1 discussed.

2 Q. And you understand that -- you recall that
3 Mr. Thome testified that he prepared the cash flow
4 analysis, correct?

5 A. I'm going to say yes, because it came with his
6 testimony and I recall, I generally recall that, yes.

7 Q. And you recall that he produced this cash flow
8 analysis in response to a subpoena that was served on
9 him?

10 A. I do.

11 MR. SCHULMAN: Okay. Your Honor, I would ask
12 that Exhibit S-54 be admitted into evidence.

13 ALJ STERN: Any objections? It's your exhibit.

14 MR. MILLECAM: No, Your Honor.

15 ALJ STERN: Exhibit S-54 is admitted into
16 evidence.

17 (Exhibit S-54 was admitted into evidence.)

18 MR. SCHULMAN: Thank you.

19 ALJ STERN: Anything else? Okay. Let's see
20 where we're at.

21 Thank you, ma'am. You're excused.

22 All right. You're going to call one more
23 witness; is that correct?

24 MR. MILLECAM: That's correct.

25 ALJ STERN: All right. I think we'll pick up

1 there -- how much do you have for him?

2 MR. MILLECAM: I think only an hour. He's our
3 investigator. It will largely be foundational type
4 questions.

5 ALJ STERN: Yeah, but those --

6 MR. MILLECAM: Yeah, I know.

7 ALJ STERN: An hour ends up being three hours.

8 I think we'll pick up with that witness tomorrow
9 morning at 10 o'clock.

10 And you'll have to make your decision on what
11 you're going to be doing, I guess, overnight. Surprise
12 us.

13 MR. SCHULMAN: Yes.

14 ALJ STERN: All right. With that we'll go into
15 recess till tomorrow morning. Thank you.

16 (The hearing recessed at 3:17 p.m.)

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.

3

4

5

6

7 I, KAREN L. KESSLER, RPR, Certified Reporter
8 No. 50821 for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full, true
10 and accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.

13

14 WITNESS my hand this 3rd day of July, 2013.

15

16

17

18

Karen L. Kessler

19

KAREN L. KESSLER, RPR
Certified Reporter
Certificate No. 50821

20

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22

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25

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2

3 IN THE MATTER OF:)

4 PATRICK LEONARD SHUDAK, a single man;) DOCKET NO.
5 PROMISE LAND PROPERTIES, LLC, an) S-20859A-12-0413
6 Arizona limited liability company; and)

7 PARKER SKYLAR & ASSOCIATES, LLC, an) EVIDENTIARY
8 Arizona limited liability company.) HEARING
9)

10 Respondents.)

11

12 At: Phoenix, Arizona

13 Date: June 19, 2013

14 Filed: July 8, 2013

15

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 VOLUME III

18 (Pages 352 through 428, inclusive.)

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22

23

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25

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 10:03 a.m., on the 19th of June,
6 2013.

7

8

BEFORE: MARC E. STERN, Administrative Law Judge

9

10 APPEARANCES:

11

For the Arizona Corporation Commission Staff:

12

13 Mr. Ryan Millecam
14 Staff Attorney, Legal Division
1200 West Washington Street
Phoenix, Arizona 85007

15

For Respondent Patrick Leonard Shudak:

16

17 GREENBERG TRAUIG
By Mr. Brian J. Schulman
2475 East Camelback Road, Suite 700
18 Phoenix, Arizona 85016

19

20

21

22

23

KAREN L. KESSLER, RPR
Certified Reporter
Certificate No. 50821

24

25

1 ALJ STERN: We're back on the record in the
2 matter of Patrick Leonard Shudak, et al., in Docket No.
3 S-20859A-12-0413.

4 And at this time I believe the Division is ready
5 to go forward with another witness.

6 So do you want to call your next witness?

7 MR. MILLECAM: Mr. Schulman requests as a
8 preliminary matter that he has just a minute.

9 ALJ STERN: Okay. Mr. Schulman, what's up?

10 MR. SCHULMAN: Your Honor, I spoke with counsel
11 before and I inadvertently didn't move to admit Exhibit
12 S-13, which was the series of e-mails you may recall
13 from Mr. Swandal that we went over with him during his
14 examination. So I would move to admit Exhibit S-13.

15 ALJ STERN: Okay. Any objections? I wouldn't
16 think.

17 MR. MILLECAM: No objections.

18 ALJ STERN: Exhibit S-13 is admitted.

19 (Exhibit S-13 was admitted into evidence.)

20 ALJ STERN: Okay. At this time we can now take
21 appearances.

22 And on behalf of the Securities Division.

23 MR. MILLECAM: Ryan Millecam on behalf of the
24 Division.

25 ALJ STERN: And on behalf of the respondent.

1 MR. SCHULMAN: Mr. -- Brian Schulman on behalf
2 of Mr. Shudak.

3 ALJ STERN: All right. And are you ready to
4 call your next witness, Mr. Millicam?

5 MR. MILLECAM: Prior to calling my witness,
6 counsel and I, Mr. Schulman, discussed stipulating to
7 some exhibits being moved into evidence. So I'd like to
8 just go ahead and take care of that now before we get
9 Mr. Morin on the stand.

10 ALJ STERN: All right.

11 MR. MILLECAM: Those exhibits are going to be
12 S-2 and S-3. Those are certified copies of
13 nonregistration.

14 ALJ STERN: Okay.

15 MR. MILLECAM: Additionally, S-5, which are
16 copies of the organization. Exhibit S-6, schedules for
17 bankruptcy case, 2010 bankruptcy case.

18 ALJ STERN: Okay.

19 MR. MILLECAM: And then, additionally, certified
20 copies of some court records, that would be S-40, S-41.

21 ALJ STERN: Wait a minute. Okay. S-40, S-41.

22 MR. MILLECAM: S-42 and S-43.

23 ALJ STERN: Okay. S-42 and S-43.

24 Anything else?

25 MR. MILLECAM: No. Those are all the exhibits

1 we'd like to move into evidence at this time.

2 ALJ STERN: Okay. With that the documents
3 previously described by Mr. Millicam this morning are
4 hereby admitted into evidence.

5 (Exhibits S-2, S-3, S-5, S-6, S-40, S-41, S-42,
6 and S-43 were admitted into evidence.)

7 ALJ STERN: Okay. Are you ready now?

8 MR. MILLECAM: Yes. Thank you, Your Honor. The
9 Division will call Dee Morin as a witness.

10 ALJ STERN: Okay. Mr. Morin, do you want to
11 come up?

12

13 DULANCE MORIN,
14 Called as a witness on behalf of Staff, having been
15 first duly sworn by the Certified Reporter to speak the
16 truth and nothing but the truth, was examined and
17 testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. MILLECAM:

21 Q. Mr. Morin, can you please state your full name
22 for the record?

23 A. Dulance Morin.

24 Q. And what is your current occupation?

25 A. I work as a special investigator for the Arizona

1 Corporation Commission Securities Division.

2 Q. Can you give me a brief overview of your
3 employment background prior to working for the Division?

4 A. Prior to working for the Division I had an 11
5 year career at Nordstroms. I started out as a sales
6 associate, moved into management as a sales associate.
7 From there I moved into the loss prevention department
8 where I spent six years, starting out as a loss
9 prevention agent focusing on external shoplift. I was
10 promoted to a lead agent and manager in training where I
11 focused on internal shoplift, employee theft. That last
12 year and a half with the company I spent as a regional
13 internal investigator with all of the Nordstrom stores
14 in the State of Arizona.

15 Q. And how long have you been working with the
16 Division?

17 A. I have been working with the Division for about
18 a year and five months. I started out May 2012.

19 Q. Can you describe your duties and job functions
20 as an investigator for the Division?

21 A. It's very similar to what I did with Nordstroms.
22 We receive complaints from the public. The complaints
23 are then forwarded to our chief investigator to review.
24 He then passes them down to us to review, and we start
25 the background checks on them. We interview anybody

1 that is written into the complaint. We interview the
2 complainant themselves, and then we gather information
3 to present to the case team to move forward with the
4 case if it's decided that it will go into a case.

5 Q. And you were assigned as the investigator of the
6 Division's investigation into Parker Skylar and Patrick
7 Shudak; is that correct?

8 A. Yes, I was.

9 Q. And when was that assignment?

10 A. I believe that was in May 2012.

11 Q. In your capacity as a special investigator in
12 the Securities Division, are you custodian of the
13 evidence --

14 A. Yes, I am.

15 Q. Excuse me. The custodian of the evidence and
16 the Division's investigation files of Parker Skylar and
17 Pat Shudak?

18 A. Yes, I am.

19 Q. As part of the Division's investigation of
20 Mr. Shudak and Parker Skylar, has the Division requested
21 any documents from other sources?

22 A. Yes.

23 Q. Have they requested bank records?

24 A. Yes, we have.

25 Q. Records from investors.

1 Can you describe briefly the process that is
2 followed when the Division receives documents in
3 response to these requests?

4 A. The first thing we would do when we receive
5 documents from a request is -- of course, I would be the
6 one receiving it -- I would review the documents to make
7 sure that we had dates, names and everything correct.
8 The information that I get from dates, names, I would
9 then input into a document inventory by, first by the
10 name of the person who sent it to me, the date that it
11 came in, and then I'd give a brief summary of what's in
12 the documents. We would also, towards the end, after
13 reviewing, what we would also do is put our Bates labels
14 onto those documents. Our Bates labels start with
15 ACC0001 and we would go all the way through whatever
16 Bates labels are needed for those documents.

17 Q. Did you follow those procedures with documents
18 you've received from banks in the investigation of
19 Parker Skylar?

20 A. Yes, we did.

21 Q. Did the documents you receive ever leave the
22 Division's office?

23 A. No, they did not.

24 Q. As part of your investigation, did you also
25 review documents that were obtained as the result of the

1 subpoena request on the respondents?

2 A. Yes, we did.

3 Q. And did respondents provide documents in
4 response to the Division's subpoena on them?

5 A. They did.

6 Q. In the course of receiving those documents, are
7 you familiar with the attorney Brian Schulman?

8 A. Yes, I am.

9 Q. Did the documents you received, did you receive
10 them through him and his law firm?

11 A. Yes. We actually provided the subpoena to
12 Patrick Shudak, and that subpoena was delivered by
13 Hawaii, and Mr. Schulman actually provided documents
14 from Mr. Shudak.

15 Q. Had Mr. Shudak already Bates labeled the
16 documents prior to sending them to you?

17 A. Yes, he did.

18 Q. Did you add additional Bates labels to those
19 documents when you received them?

20 A. We did not. The documents already had their own
21 Bates labels starting with, I believe it was a PS
22 lettering and numbers following.

23 Q. But you did enter these documents into the
24 document inventory?

25 A. Yes, we did.

1 Q. And you reviewed those documents when they came
2 in?

3 A. Yes.

4 Q. Mr. Morin, as part of your investigation, did
5 you perform any background investigation regarding
6 Mr. Shudak?

7 A. Yes, I did.

8 Q. Were you able to determine if he resided in the
9 State of Arizona in the years 2008 and 2009?

10 A. According to the background information that I
11 gathered, Mr. Shudak was in Arizona during that time
12 frame.

13 Q. Did you discover that he has since left Arizona?

14 A. Yes. He's currently residing in Hawaii, from
15 the background information that I gathered.

16 Q. Now, as part of your investigation, do you also
17 conduct or participate in interviews with actual and
18 potential witnesses and investors?

19 A. Yes.

20 Q. Have you ever had correspondence with Mr. Martin
21 Schwank?

22 A. Yes.

23 Q. Has Mr. Schwank provided you with any documents
24 related to Mr. Frank Lamer, Steve Berendes, and Gary
25 Bates?

1 A. Yes, he has.

2 Q. Mr. Morin, can you please pull out what we have
3 labeled as Exhibit S-58?

4 And, Your Honor, can I make sure that you
5 received a copy of this document? This is an additional
6 document.

7 ALJ STERN: Let's see. Looks like it. Well,
8 yeah, I have it.

9 MR. MILLECAM: Brian, Mr. Schulman, you also
10 have a copy of S-58 in front of you, correct?

11 MR. SCHULMAN: Yes, correct.

12 MR. MILLECAM: Okay. Excellent.

13 BY MR. MILLECAM:

14 Q. Mr. Morin, do you have S-58 in front of you?

15 A. Yes, I do.

16 Q. Can you describe what S-58 is?

17 A. According to the subject line, S-58 -- and when
18 I reviewed the document -- S-58 is investment documents
19 attached for Bates, Berendes, Lamer.

20 Q. Am I'm reading it correctly, is this an e-mail
21 from Mr. Martin Schwank?

22 A. It's an e-mail from Mr. Martin Schwank directly
23 to me.

24 Q. Okay. The first page of this is that e-mail,
25 and then we have the subsequent pages that are those

1 attachments that came along with this e-mail?

2 A. Correct.

3 Q. Can you describe these attachments to us?

4 A. These attachments, they're actually reflecting
5 what was in the e-mail. Once I opened them, I noticed
6 that they were copies of checks, wire transfers.

7 Q. Did Mr. Schwank, in your correspondence with
8 him, explain how he obtained these documents?

9 A. He received them through Bates, Berendes, Lamer
10 themselves.

11 MR. MILLECAM: Your Honor, we are going to move
12 that Exhibit S-58 be admitted into evidence.

13 MR. SCHULMAN: I object, Your Honor. You'll see
14 that this e-mail is dated June 18th, 2013, which is
15 yesterday. This is a brand new exhibit. It's
16 Mr. Schwank purporting to provide the Division with
17 investor information that is not of his own investment.

18 The Division has had, I don't know, two years to
19 collect information directly from these investors, and
20 to throw this exhibit and these documents in the 11th
21 hour without any direct communications even from the
22 investors themselves, I think it lacks foundation. It's
23 untimely. It's certainly prejudicial to our case to
24 throw these in at the last minute. So we're objecting.

25 ALJ STERN: Okay. Any response to that,

1 Mr. Millicam?

2 MR. MILLECAM: Yes, Your Honor. First, I
3 believe we established foundation. Mr. Morin described
4 how he obtained those documents, and Mr. Schwank
5 obtained those documents. That is consistent with
6 Mr. Schwank's testimony earlier this week. These
7 documents were obtained in the same manner as Exhibit
8 S-53a, which has already been admitted through that same
9 process, which has been deemed reliable.

10 ALJ STERN: And these are the documents referred
11 to by that witness from Iowa -- what's his name?

12 MR. MILLECAM: Mr. Berendes.

13 ALJ STERN: Mr. Berendes. He said one of his
14 companies was something called REBS?

15 MR. MILLECAM: That's correct.

16 ALJ STERN: And the other one was Heartland
17 Livestock, or something. And I think, I believe these
18 are those, these are them, or something. It's, these
19 are the checks that, copies of the front of the checks.

20 Any reason why the Division never secured these
21 from Mr. Berendes prior to yesterday?

22 MR. MILLECAM: These we obtained through, we did
23 request documents from Mr. Berendes, and he only sent
24 back so many with, even after follow up.

25 Yesterday, as we were discussing

1 Ms. McDermitt-Fields testimony, she indicated that she
2 did not have copies of checks for certain persons. Mr.
3 Schwank was in attendance. He let it be known to us
4 that he had obtained those checks earlier when he tried
5 to gather data from persons that had not yet been
6 provided to us. When they were provided we made sure
7 that we obtained them through the same procedures that
8 we used before. They also match the investor amounts,
9 they correspond with the investor amounts and the
10 purchase agreements. But that is the short explanation
11 of why they are being presented now.

12 ALJ STERN: All right.

13 MR. SCHULMAN: Your Honor, just -- I'm sorry to
14 interrupt -- but just to be clear, the Exhibit S-58
15 consists of purported documents from three different
16 investors, not just Mr. Berendes. It also includes
17 purported transactions from a Mr. Bates and a Mr. Lamer
18 who have not provided any testimony in this case and no
19 foundation in this case.

20 MR. MILLECAM: Your Honor, this may be a little
21 bit unusual, but it just so happens that Mr. Schwank is
22 here in the room. If you feel that the foundation
23 that's been laid so far is inadequate, he can describe
24 how he obtained these and why he believes, why he's
25 certain that these are from the persons listed.

1 ALJ STERN: Well, it's a bit irregular, but
2 perhaps we can reserve a ruling on this until at some
3 point, if we take a recess this morning, you can recall
4 Mr. Schwank for the limited purpose of establishing how
5 he came into possession of these checks, and how they
6 may tie into investor documents that I don't know
7 whether he's the one who provided them to you, but they
8 relate back to those documents I guess.

9 Okay. Let's continue, and I'll leave it up to
10 you, Mr. Millicam, to remember to go back to S-58.

11 Go ahead.

12 BY MR. MILLECAM:

13 Q. Mr. Morin, we were discussing your role in
14 interviewing potential, interview potential witnesses
15 and investors.

16 In the course of investigating this case, did
17 you interview a Mr. Eric Falbe?

18 A. Yes, I did.

19 Q. When you interviewed -- first off, can you
20 explain who Mr. Falbe is and his relationship to Parker
21 Skylar?

22 A. Actually, I participated in the interview. And
23 Mr. Falbe, I believe, was the gentleman that lent Parker
24 Skylar \$250,000.

25 Q. When you interviewed Mr. Falbe, did you request

1 these loan documents from him?

2 A. Yes, we did.

3 Q. Do you have before you Exhibit S-15?

4 ALJ STERN: S-15, one, five?

5 MR. MILLECAM: One, five, yes.

6 BY MR. MILLECAM:

7 Q. Mr. Morin, do you have that in front of you?

8 A. Yes, I do.

9 Q. Mr. Morin, when you interviewed Mr. Falbe, you
10 requested the loan documents sent to you. Do you
11 recognize S-15 as his response to that request?

12 A. Yes.

13 Q. Maybe you can explain just a little bit who
14 Mr. Robert Eckert is, who this is addressed to.

15 A. Robert Eckert is the chief investigator for the
16 Arizona Corporation Commission Securities Division. This
17 e-mail was forwarded to Mr. Eckert. He in turn
18 forwarded it over to me.

19 Q. Did Mr. Eckert also participate in the interview
20 with Mr. Falbe?

21 A. Yes, he did.

22 Q. The remaining documents in S-15, are those the
23 documents Mr. Falbe sent to the Division along with this
24 e-mail?

25 A. Yes, they are.

1 MR. MILLECAM: Your Honor, we're going move S-15
2 into evidence.

3 MR. SCHULMAN: No objection.

4 ALJ STERN: No objection noted Exhibit S-15 is
5 admitted.

6 (Exhibit S-15 was admitted into evidence.)

7 ALJ STERN: Go ahead.

8 BY MR. MILLECAM:

9 Q. During your interview with Mr. Falbe, did he
10 confirm that he lent the \$250,000 described in these
11 documents to Parker Skylar?

12 MR. SCHULMAN: Objection. Hearsay, Your Honor.
13 If they wanted testimony from Mr. Falbe, they could have
14 called him as a witness.

15 MR. MILLECAM: Your Honor, hearsay is admissible
16 in these proceedings as long as it's reliable hearsay.
17 We have established foundation from Mr. Morin regarding
18 what Mr. Falbe said, and we also have the documents from
19 Mr. Falbe corroborating this.

20 ALJ STERN: Okay. I'll overrule the objection.
21 Go ahead.

22 BY MR. MILLECAM:

23 Q. Would you please answer the question?

24 A. Can you please ask the question again, please?

25 Q. Yes. In your interview with Mr. Falbe, did he

1 confirm that he, in fact, lent the \$250,000 to Parker
2 Skylar?

3 A. Yes, he did.

4 Q. Did Mr. Falbe describe the current status of the
5 loan?

6 A. According to Mr. Falbe that loan is in default.

7 Q. Did Mr., did Mr. Falbe in the interview, did he
8 describe any rights that he may have in this loan?

9 A. With the agreement, according to the agreement
10 that he had with Parker Skylar, Mr. Falbe is claiming
11 100 percent of Parker Skylar because it defaulted on the
12 loan.

13 Q. Did he describe any plan to enforce those
14 rights?

15 A. He did, and he has. Actually, yeah, he has
16 taken Parker Skylar & Associates to court over these
17 rights.

18 Q. If you could go ahead and set aside Exhibit
19 S-15.

20 Mr. Morin, I'd like to talk to you about a few
21 other interviews that you participated in. Could you go
22 ahead and -- did you, in the course of your
23 investigation, participate in the interview with
24 Mr. Gary Bates?

25 A. Yes, I did.

1 Q. Do you recognize, can you get before you Exhibit
2 S-17?

3 Do you recognize Exhibit S-17?

4 A. Yes, I do.

5 Q. Do you recognize them as investment documents
6 that Gary Bates executed in connection with his
7 investment in Parker Skylar?

8 A. Yes.

9 Q. Those documents show that Mr. Bates was going to
10 purchase a 1 percent interest in Parker Skylar for
11 \$25,000; is that correct?

12 A. That's correct.

13 Q. In your interview, did you confirm with Mr.
14 Bates that he actually paid this money, the \$25,000, to
15 Parker Skylar?

16 MR. SCHULMAN: Objection, Your Honor. Hearsay.

17 Your Honor, the problem with this line of
18 questioning is that I don't have an opportunity to
19 cross-examine these witnesses because they're not being
20 called as witnesses in this case. So if they're going
21 to use an investigator to get in all this testimony from
22 witnesses, I deserve an opportunity to cross-examine
23 these witnesses. This is classic hearsay. And I
24 understand that the rules are somewhat lax in this
25 proceeding, but the rules are very clear that the rules

1 of evidence should be considered and applied where
2 appropriate and where justice requires. And if they are
3 going to get in all this evidence through an
4 investigator that otherwise should be coming in through
5 witnesses, I miss an opportunity to cross-examine these
6 witnesses.

7 ALJ STERN: Did you think they would not be
8 called?

9 MR. SCHULMAN: Of course I did not think they
10 would be called, because they're not listed on the
11 Division's list of witnesses.

12 ALJ STERN: But the documents are listed as
13 exhibits.

14 MR. SCHULMAN: I'm not objecting to the
15 documents, Your Honor. I'm objecting to the line of
16 questioning that are eliciting hearsay testimony from
17 the witness.

18 ALJ STERN: Well, I understand your objection
19 with respect to hearsay. I understand that you're on
20 the other side instead of the Division's now, and I
21 understand that if you really feel a drastic need to
22 cross-examine any of these witnesses with respect to
23 their investments, you'd have an opportunity to do so.
24 If you need additional time and you feel you want to
25 cross-examine them, I won't preclude you from doing

1 that.

2 The Division hasn't called them, but in many
3 past cases involving investments by numerous investors,
4 several investors usually spell out what happened
5 between them and the offering party, and then the rest
6 of the investments are usually filled in by Division
7 representatives, either investigators or accountants.
8 And we had the accountant yesterday. Today we have the
9 investigator.

10 So I'm going to overrule your objection. And,
11 as I said, if you want to pursue calling individual
12 investors with respect to questioning the amount or the
13 nature of their investments with Parker Skylar and your
14 client Mr. Shudak, you will have an opportunity to do
15 that, if you advise me you want to do that. Otherwise,
16 as I say, I'll just overrule your objection as to him
17 testifying about what he discussed with Mr. Bates. Your
18 choice. Okay. So I'm overruling the objection.

19 Continue with your questions.

20 BY MR. MILLECAM:

21 Q. The question being asked was, in your interview
22 with Mr. Bates, did you confirm that he invested the
23 25,000 described in his purchase documents?

24 A. Yes.

25 Q. Did Mr. Bates tell you how he learned of the

1 investment opportunity with Parker Skylar?

2 A. From the interview we had with Mr. Bates he, he
3 referenced Mr. John Schnaible as someone that had
4 introduced him to Patrick Shudak.

5 MR. SCHULMAN: Your Honor, can I have a standing
6 objection, hearsay objection, to this testimony?

7 ALJ STERN: Absolutely.

8 MR. SCHULMAN: So that I don't have to keep
9 interrupting the question.

10 ALJ STERN: Absolutely. And I'll overrule your
11 objection with respect to any of the, I assume there
12 will be a few more investor questions you're going to
13 ask, so we'll note your objection. It's in the record.
14 But here again, as Mr. Millicam pointed out, it's an
15 administrative proceeding and, I'm sorry, but we accept
16 some hearsay in these proceedings.

17 Go ahead.

18 BY MR. MILLECAM:

19 Q. So you stated that Mr. Schnaible introduced
20 Mr. Bates to Pat Shudak.

21 Did Mr. Bates have an existing relationship
22 with --

23 ALJ STERN: How do you -- let me just ask you
24 this. Mr. Schnaible -- and you can't testify -- but do
25 you know how to spell his name?

1 MR. MILLECAM: Yes. It is S-C-H-N-A-I-B, as in
2 boy, L-E.

3 ALJ STERN: Okay. Go ahead. Continue your
4 questioning.

5 BY MR. MILLECAM:

6 Q. Mr. Morin, Mr. Bates said that he met Mr. Shudak
7 through Mr. Schnaible.

8 Did Mr. Shudak have a preexisting relationship
9 with Mr. Shudak prior to this introduction?

10 A. To Mr. Bates, no.

11 ALJ STERN: You mean Mr. Bates, did he have a --

12 BY MR. MILLECAM:

13 Q. Did Mr. Bates have a preexisting relationship
14 with Mr. Shudak prior to this introduction?

15 A. According to Mr. Bates, again, no.

16 Q. Did Mr. Bates ever participate in the management
17 of Parker Skylar?

18 A. Say that again, please.

19 Q. Did Mr. Bates ever participate in the management
20 of Parker Skylar?

21 A. No, he didn't.

22 Q. How did Mr. Bates expect that his funds would be
23 used, according to your interview?

24 MR. SCHULMAN: Objection, Your Honor. Hearsay
25 and foundation. Now we're asking the witness to get

1 into the head of Mr. Bates.

2 ALJ STERN: Overruled. Go ahead.

3 THE WITNESS: According to the interview,
4 Mr. Bates said that the money that he invested was to be
5 used in the land development.

6 BY MR. MILLECAM:

7 Q. Has Mr. Bates received any return on his
8 investment?

9 A. No.

10 Q. Let's talk about another investor. Can you go
11 ahead and put away that exhibit, and please place before
12 you Exhibit S-19?

13 ALJ STERN: You're going to S-19?

14 MR. MILLECAM: S-19, yes.

15 BY MR. MILLECAM:

16 Q. Mr. Morin, do you recognize Exhibit S-19 as
17 investment documents for Rosan Knapp?

18 A. Yes.

19 Q. Now, as part of your investigation, did you
20 interview a person in connection with this investment?

21 A. Yes. We interviewed Gerald Gruetzemacher.

22 Q. What is Gerald Gruetzemacher's relationship to
23 Ms. Knapp?

24 A. Ms. Knapp is the wife of Mr. Gruetzemacher.

25 Q. So you actually spoke to Mr. Gruetzemacher and

1 not Ms. Knapp?

2 A. Yes.

3 ALJ STERN: How do you spell Gruetzemacher?

4 MR. MILLECAM: Gruetzemacher,

5 G-R-U-E-T-Z-E-M-A-C-H-E-R.

6 ALJ STERN: And he's the husband of, what's her
7 name, Knapp?

8 MR. MILLECAM: Yes. Rosan Knapp.

9 ALJ STERN: Okay. Go ahead.

10 BY MR. MILLECAM:

11 Q. Did Mr. Gruetzemacher describe his role in this
12 investment when you interviewed him?

13 A. According to Mr. Gruetzemacher, his wife, Rosan
14 Knapp, pulled \$100,000 from her 401(k) to invest in
15 Parker Skylar in his name.

16 Q. Did, did Mr. Gruetzemacher and Ms. Knapp meet
17 with anyone before investing in Parker Skylar?

18 Let me rephrase.

19 Did Mr. Gruetzemacher and Ms. Knapp discuss
20 their investment with anyone prior to investing?

21 A. I believe -- you know, I cannot remember who
22 they spoke to.

23 Q. You don't remember?

24 A. I'm trying to remember the interview. I can
25 reference the recordings to give you a -- I don't want

1 to tell you a name that might not be true.

2 Q. Does the name Alan Thome appear in those
3 interviews?

4 MR. SCHULMAN: Objection, Your Honor. Leading.
5 I'm not looking to be belligerent here, Your Honor, but
6 we have a witness who, basically, in his testimony has
7 just illustrated the problem with this line of
8 questioning. We're testing his memory about witness
9 interviews that took place, we have no idea how long
10 ago, and he's just going by memory, and the memory is
11 based on hearsay from witnesses that he talked to. And
12 we have to take that in as evidence of testimony from
13 the witnesses themselves.

14 The rules are very clear, Your Honor, that, that
15 the rules of evidence apply here, they're just to be
16 relaxed in certain instances. That's what the
17 regulation says, Your Honor. It's not that they're to
18 be ignored.

19 ALJ STERN: Right.

20 MR. MILLECAM: I'll withdraw the last question.

21 ALJ STERN: Thank you.

22 BY MR. MILLECAM:

23 Q. Did you ask Mr. Gruetzemacher, did you confirm
24 with Mr. Gruetzemacher, that he invested the \$100,000
25 with Parker Skylar?

1 A. Yes, we did.

2 Q. Did he, did he describe how he invested that
3 money?

4 A. Yeah. It was from his wife, Rosan's 401(k) to
5 Mr. Gruetzemacher. Mr. Gruetzemacher then invested that
6 money in Parker Skylar going towards the land
7 development.

8 Q. Did he transfer it directly to Parker Skylar?

9 A. He transferred it to Mr., according to him,
10 Mr. Dan Cutis.

11 Q. Did he describe to you how he expected his money
12 to be used?

13 A. Again, it was to be going towards the land
14 development.

15 Q. Did you discuss with Mr. Gruetzemacher whether
16 he was an accredited --

17 ALJ STERN: Excuse me. That Mr. Dan Cutis, he's
18 the attorney that was described yesterday by another
19 witness, is that correct, Mr. Morin?

20 THE WITNESS: That's correct, sir.

21 ALJ STERN: Okay. Go ahead.

22 BY MR. MILLECAM:

23 Q. His money was to be used in a development.

24 Can you describe which development that was?

25 A. It's supposed to be Cochise County 1900, LLC.

1 Q. Did he authorize the use of his funds for any
2 other purposes?

3 A. According to Mr. Gruetzemacher, he did not.

4 Q. When you interviewed Mr. Gruetzemacher, did you
5 discuss whether he was an accredited or sophisticated
6 investor?

7 A. We did, and he said he wasn't.

8 Q. Did he understand the definition of accredited?

9 A. Yes, he did.

10 Q. And just to be clear, you asked him whether he
11 was accredited at the time he made his investment?

12 A. We did.

13 Q. Did you ask Mr. Gruetzemacher if he had ever
14 received any return on his investment?

15 A. We did, and he said he had not.

16 Q. Mr. Morin, let me go ahead and have you set that
17 exhibit aside. Let's talk about one final investor
18 while we have you here.

19 Can you please take a look at Exhibit S-33?

20 A. S-33?

21 Q. Yes. Let me know when you have that in front of
22 you.

23 Do you have S-33 in front of you, Mr. Morin?

24 A. Yes, I do.

25 Q. Mr. Morin, as part of your duties as an

1 investigator with the Division, did you participate in
2 an interview with Mr. Donald Van Hook?

3 A. Yes, we did.

4 Q. As part of that interview, did you request that
5 Mr. Van Hook send documents related to transactions with
6 Parker Skylar?

7 A. Yes.

8 Q. Do you recognize Exhibit S-33 as the document
9 that he sent?

10 A. Yes.

11 Q. In your interview with Mr. Van Hook, did he
12 describe how his money was to be used?

13 A. Again, it was to go towards the land
14 development.

15 Q. Can you describe what land development we are
16 talking about?

17 A. Cochise County 1900.

18 Q. Did Mr. Van Hook describe himself as an investor
19 in Parker Skylar?

20 A. He did.

21 Q. Did Mr. Van Hook confirm that he, in fact, made
22 the payment of the \$200,000 shown in these documents
23 before you?

24 A. Yes, he did.

25 Q. And did you ask Mr. Van Hook if he received any

1 payments, any return on his investment?

2 A. Yes, we did. And he said he did not receive any
3 payment.

4 Q. You can go ahead and set that exhibit aside.

5 Mr. Morin, as part of your investigation of
6 Parker Skylar, did you review the investor documents
7 that has been admitted as Exhibits S-16 and S-33. Go
8 ahead and take a look at those if you need to.

9 ALJ STERN: S- excuse me.

10 MR. MILLECAM: S-16 and S-33.

11 THE WITNESS: Yes, I did.

12 BY MR. MILLECAM:

13 Q. In your review of these documents, were you able
14 to confirm the number of investors that invested in
15 Parker Skylar?

16 A. Yes, we were.

17 Q. Did you also review the purchase price and dates
18 on those investments?

19 A. We did.

20 Q. Mr. Morin, can you please get in front of you
21 Exhibit S-48? Do you have that in front of you,
22 Mr. Morin?

23 A. Yes, I do.

24 Q. Do you recognize Exhibit S-48?

25 A. Yes.

1 Q. Did you help create this document?

2 A. Yes, I did.

3 Q. You mentioned earlier that you reviewed the data
4 in Exhibits S-16 through S-33.

5 A. Correct.

6 Q. Do the investor name and purchase price and
7 date, dates in Exhibit S-48 accurately depict the data
8 from these investor documents that you reviewed?

9 A. Yes, they do.

10 Q. Were you able to go through S-48 and confirm all
11 the data in here?

12 A. Yes, we were.

13 Q. Just to be clear, when we talk about investor
14 documents you reviewed, the columns to the far right
15 here has an ACC number. Does that number reflect the
16 Bates labels of the documents that you reviewed?

17 A. Yes, they do.

18 Q. And those are the same Bates labels as the
19 Exhibits S-16 and S-33; is that correct?

20 A. That's correct.

21 MR. MILLECAM: We are going to go ahead and move
22 Exhibit S-48 into evidence.

23 MR. SCHULMAN: Objection. Foundation.

24 MR. MILLECAM: Your Honor, I believe we laid
25 foundation. Mr. Morin just confirmed that he reviewed

1 all the investor documents, and that the data in this
2 exhibit is from those documents. He confirmed it for
3 accuracy. Those documents have already been admitted
4 into evidence.

5 ALJ STERN: And did you create this document,
6 Mr. Morin?

7 THE WITNESS: I participated in creating it,
8 sir.

9 ALJ STERN: And this lists the investors that
10 the Division is aware of in this offering, correct?

11 THE WITNESS: That's correct.

12 ALJ STERN: And the amounts specified for the
13 investments comes from their purchase, purchase
14 agreement or their investment purchase -- excuse me --
15 their investment purchase agreement or their notes,
16 primarily. Is that what you used?

17 THE WITNESS: That's correct, sir.

18 ALJ STERN: Okay. I will admit Exhibit S-48.

19 (Exhibit S-48 was admitted into evidence.)

20 BY MR. MILLECAM:

21 Q. Mr. Morin, let me ask you one or two questions
22 just to clarify what might be going on in this -- you
23 just answered that the amount invested, the second
24 column, that's the purchase price listed in investor
25 documents.

1 A. That's correct.

2 Q. Can you explain why there is no purchase price
3 in some of these instances? Let's start with Mr. John
4 Schnaible. He's the fourth row down.

5 A. Mr. Schnaible received membership interest in
6 his units for something other than cash. He didn't
7 actually invest cash into Parker Skylar.

8 Q. So you had no note or purchase agreement for
9 Mr. Schnaible?

10 A. That's correct.

11 Q. Over there on the second column to the right,
12 the second furthest column, it says Assignment of
13 Interest.

14 Is that the document you reviewed for
15 Mr. Schnaible?

16 A. That's correct.

17 Q. Okay. Similarly, if you go down, the next page
18 we see similar blanks for Mr. Lamer, Mr. McCardle, and
19 Jim Peterson.

20 Are those blank because those individuals also
21 did not have purchase agreements for those particular
22 membership interests?

23 A. That's correct.

24 Q. I see a blank next to Mr. Eric Falbe, there is
25 no amount invested there.

1 Can you explain, briefly, why that amount is not
2 there?

3 A. When we spoke to Mr. Falbe we did confirm that
4 he received, he put in 250,000 as a loan to Parker
5 Skylar. He, according to him, he said he received
6 250,000 in interest, but he didn't get his principal
7 back. So the Division looked at it as 250,000 came in.
8 He received, when it went out, he received 250,000. So
9 we didn't include him in the restitution list.

10 ALJ STERN: Which one is that?

11 THE WITNESS: That would be Mr. Eric Falbe,
12 Nascent Investments.

13 ALJ STERN: Wait a minute. I'm missing -- where
14 exactly is he on this list?

15 THE WITNESS: He is on the front page, Your
16 Honor.

17 ALJ STERN: Okay. You say 250,000 came in and
18 250,000 went out?

19 THE WITNESS: That's correct. According to him,
20 that was his interest, and he didn't receive his
21 principal, so he wasn't counting the 250k as the money
22 he put in. He just counted that as interest.

23 ALJ STERN: Oh, I see.

24 BY MR. MILLECAM:

25 Q. And is it fair to say that where it says amounts

1 invested, that's, there's only going to be a dollar
2 amount there, if that money appeared in the purchase
3 price and the Division has decided that restitution is
4 owed to that person?

5 A. That's correct.

6 ALJ STERN: Wait a minute. I have to understand
7 something.

8 Is the Division saying 250,000 is owed to him?

9 THE WITNESS: What the Division is saying is
10 that according to Falbe, and we don't, according to
11 Falbe he only received interest. The money that he put
12 in, the money that he received is not the money that he
13 put in. Parker Skylar owed him a certain amount of
14 interest. He is counting the 250k as interest and other
15 fees that Parker Skylar owed him, but the full amount to
16 Mr. Falbe, according to him, has not been paid.

17 ALJ STERN: The full amount --

18 THE WITNESS: Of the 200 -- yeah, the -- he's
19 counting the 250,000 as something else.

20 ALJ STERN: Something else?

21 THE WITNESS: Interest, other fees.

22 ALJ STERN: Okay.

23 THE WITNESS: Again, in not being able to have
24 an investment agreement that we can reference, we felt
25 that he was not going to be included in the restitution.

1 ALJ STERN: Okay. Go ahead.

2 BY MR. MILLECAM:

3 Q. Mr. Morin, can you go ahead, and the fourth
4 column here says, Date. Am I correctly summarizing this
5 when I say that the dates here are in chronological
6 order?

7 A. Yes.

8 Q. And these, again, are the dates that you
9 confirmed with the investor documents that you reviewed?

10 A. That's correct.

11 Q. What does column number five, Running Total of
12 Membership Units Transferred, represent?

13 A. It represents the units that were transferred to
14 each investor.

15 Q. At some point were more than 100 membership
16 units transferred?

17 A. When we go over two pages, actually third page
18 over, to Mr. John Paul McCardle, at that point on
19 December 12th, December 6th, 2008, 101 units were
20 transferred to those investors at that point.

21 Q. And according to this exhibit, transactions
22 occurred after 100 percent had been transferred?

23 A. Correct.

24 Q. Can you thumb to the last page? The final row
25 says, Total.

1 Can you describe how that number was reached,
2 total of 2,142,000?

3 A. This is the total of, the total of the money
4 invested by all the investors in Parker Skylar. It's
5 just a running total. We added everything up, and
6 that's the number we came up with.

7 Q. Similarly, I see a total of 133.

8 Can you describe what that number represents?

9 A. 133 is a total of units transferred to the
10 investors of Parker Skylar.

11 MR. MILLECAM: Okay. Your Honor, I'm going to
12 take a minute to review my notes before I pass the
13 witness on for cross-examination.

14 I have no further questions at this time.

15 ALJ STERN: Okay. Mr. Schulman, do you want to
16 ask this witness some questions?

17 MR. SCHULMAN: Yes, Your Honor.

18

19 CROSS-EXAMINATION

20 BY MR. SCHULMAN:

21 Q. Good morning, Mr. Morin.

22 A. Good morning, sir.

23 Q. Let's stick with Exhibit S-48 since we're
24 already there.

25 The, just to be clear, the amount invested

1 column, that is not, those are amounts that you have
2 pulled from whatever investor documents you received,
3 not, you have not been able to confirm all of those
4 amounts actually were paid into Parker Skylar, correct?

5 A. Correct. Only from the investor documents.

6 Q. Right. So this document does not purport to
7 show how much money was actually invested, money that
8 actually hit Parker Skylar, you just pulled numbers off
9 of the investor documents, correct?

10 A. That's correct.

11 Q. Then with respect to the running total of
12 membership units transferred, you don't know, for
13 example, with respect to John Schnaible, whether there
14 was any consideration paid for the, these purported
15 membership interests in this, in his case six, correct?

16 A. That's correct. I only referenced the investor
17 documents that we had.

18 Q. Right. So in this case, and the investor
19 document that you're relying upon are whatever documents
20 are listed in the last two columns on the right-hand
21 side, correct? The document is the ACC number?

22 A. That's correct.

23 Q. Right. So you don't know if there was any
24 consideration paid by Mr. Schnaible or anyone else that
25 doesn't have any amounts invested in that column,

1 correct?

2 A. That's correct.

3 Q. And you don't know if there was any
4 consideration paid for any of these purported investors
5 if you don't have evidence of monies being received by
6 Parker Skylar, correct?

7 A. That's correct.

8 Q. Okay. Have you done -- and do you know whether
9 or not any of the these investors were, were sold back
10 their, their units in Parker Skylar?

11 A. I'm not aware of that, sir.

12 Q. Did you interview Mr. Olp?

13 A. I believe I participated in an interview with
14 Mr. Olp.

15 Q. Okay. And are you not aware that, that monies
16 were returned to Mr. Olp in exchange for his membership
17 units in Parker Skylar?

18 MR. MILLECAM: Objection. Foundation.

19 THE WITNESS: No, I'm not.

20 BY MR. SCHULMAN:

21 Q. You never heard that before?

22 A. No, sir.

23 Q. Are you aware that we've seen documents in this
24 case where --

25 MR. MILLECAM: Objection. Foundation. If

1 Mr. Schulman would like to provide the witness to
2 establish the --

3 MR. SCHULMAN: I haven't even finished my
4 question.

5 ALJ STERN: Yeah. Let's hear the rest of the
6 question.

7 BY MR. SCHULMAN:

8 Q. Are you aware we have seen documents in this
9 case provided, actually created by the Division where
10 money has flowed from Parker Skylar to Tim Olp for one
11 of his ministries?

12 A. Repeat that again for me, sir.

13 Q. Sure. Are you aware of exhibits that have been
14 produced by the Division and created by the Division
15 that have shown monies going from Parker Skylar either
16 to Tim Olp or one of his ministries?

17 A. Well, we do have, probably, thousands of pages.
18 For me to say yes or no to that I would have to look at
19 those documents.

20 Q. Do you have Exhibit 36 available and 38?

21 ALJ STERN: Which one are you going to first?

22 MR. SCHULMAN: I'll do 36 first.

23 BY MR. SCHULMAN:

24 Q. Have you seen -- do you have Exhibit 36 in front
25 of you?

1 A. Yes.

2 Q. Have you seen Exhibit 36 before?

3 A. If I have, I don't remember.

4 Q. Okay. Well, do you see in Exhibit 36 there's a
5 chart that says use of funds? There is a table that
6 says use of funds in the middle of the page?

7 A. Yes.

8 Q. Do you see the second line item there is an
9 April 15, 2008 apparent payment to Tim Olp Bible
10 Ministries for \$25,000. Do you see that?

11 A. Yes, I do.

12 Q. Do you know why Mr. Olp was paid \$25,000?

13 A. No, I don't remember, sir.

14 Q. Did you ask him that question when you
15 interviewed him?

16 A. Again, if I did ask him that question I would
17 have to reference either my recordings or the memos. I
18 don't remember off the top of my head.

19 Q. If you'll turn to Exhibit 38, do you see the Use
20 of Funds table in Exhibit 38 when you have that in front
21 of you?

22 A. Yes, sir.

23 Q. Okay. Do you see that there's a reference to
24 Church USA?

25 A. Yes, I do.

1 Q. Do you understand that is a Tim Olp related
2 ministry?

3 A. Church USA, I have never heard of Church USA
4 being connected to Tim Olp.

5 Q. So as part of your investigation you didn't
6 bother to look to see what Church USA was about?

7 A. Again, I have a lot of names and companies
8 flowing through me. This is why we use our forensic
9 accountant. She's the one that tracks numbers. I take
10 in the evidence. I review them briefly, and then I pass
11 it over to our case them.

12 Q. So I take it, then, you don't know why \$15,000
13 was paid to Tim Olp Bible Ministries on August 12th,
14 2008 either?

15 A. Again, if that was mentioned in our
16 conversations, I would have to review either my memos or
17 my recordings.

18 Q. Okay. Well, I'm done with these two exhibits.

19 With respect to Exhibit S-48 again, let's go
20 back there.

21 Have you done the math to determine how many
22 purported membership interests were actually paid for
23 just based on the investor documents that you have?

24 A. That were paid for?

25 Q. Yeah. Actually where you have a document that

1 even purports to indicate that an investor might have
2 paid for a membership unit or provided some
3 consideration for a membership unit?

4 A. I'm not sure I understand the question, sir.

5 Q. Well, you've got a running total here of 133
6 membership interests, correct?

7 A. Correct.

8 Q. Okay. And we know, based on this table, that
9 there are multiple occasions where you have not been
10 able to identify even a document suggesting that
11 consideration was paid for those membership interests,
12 correct?

13 A. Correct.

14 Q. Have you done any calculations to reduce the
15 running total of 133 --

16 A. I wouldn't do any calculations, sir. Again,
17 that's why we have a forensic accountant. I'm not a
18 numbers guy.

19 Q. Well, let's just go through this real quick.

20 Mr. Schnaible, you've got six membership units
21 attributed to him and you don't have any amount invested
22 for him, correct?

23 A. That's correct.

24 Q. Mr. Falbe, we have already discussed Mr. Falbe.
25 You've got 20 membership interest units attributed to

1 him, correct?

2 A. That's correct.

3 Q. If you go to the next page, you've got
4 Mr. Lamer, Mr. McCardle, and then Mr. Lamer again and
5 Mr. Peterson, correct? Up at the top of the second
6 page.

7 A. That's correct.

8 Q. So that aggregate total is 13 membership units,
9 correct?

10 A. That's correct.

11 Q. And you're not showing any consideration paid by
12 by them for any of those membership units, correct?

13 A. That's correct.

14 Q. Now, if you go to the next page, there is four
15 membership units attributed to Mr. McCardle again, and
16 you're not showing any consideration paid by
17 Mr. McCardle for those units, correct?

18 A. That's correct.

19 Q. And if you turn the page again to the last page,
20 you'll see that Mr. McCardle and Mr. Lamer again, each
21 being attributed with one membership unit without any
22 reference to consideration paid for those units,
23 correct?

24 A. That's correct.

25 Q. You testified that you interviewed the Hooks,

1 correct?

2 A. Oh, Van Hooks, yes.

3 Q. And did they explain to you how they came to
4 make their investment?

5 A. What do you mean by how they made their
6 investment?

7 Q. Well, did they tell you how they came to be
8 introduced to this opportunity to invest, make the
9 promissory note, or to invest for the promissory note?

10 A. I would have to actually review the recording,
11 sir. I don't want to say anything under oath that might
12 be misconstrued.

13 Q. Do you have any memory of them telling you that
14 they were acquaintances of Mr. Thome?

15 A. Not to my memory right now, no.

16 ALJ STERN: You mean those, you mean the roughly
17 half dozen individuals who may not have money shown here
18 on the chart?

19 MR. SCHULMAN: No. I moved on to the Van Hooks
20 who have the \$200,000 promissory note.

21 ALJ STERN: Okay.

22 BY MR. SCHULMAN:

23 Q. You don't have any memory of their testimony or,
24 to you about how they came to invest their \$200,000?

25 A. The only memory that I remember of the Van Hooks

1 is that they did invest the \$200,000 and -- give me a
2 chance here. Let me see.

3 Yeah, again, I would have to reference -- I
4 remember our conversation, but I don't want to say
5 something and go against what is in my recordings and in
6 my memos.

7 MR. SCHULMAN: I have no further questions.

8 ALJ STERN: Okay.

9

10 EXAMINATION

11 BY ALJ STERN:

12 Q. Mr. Morin, Mr. Schulman went through some of
13 these amounts with you, and I know you testified earlier
14 that based on, in a number of instances the investment
15 purchase agreements, the notes, any assignment of
16 interest you came up with, 2 point -- well \$2,142,000
17 for a total amount, correct?

18 A. Yes, Your Honor.

19 Q. But, if I understand you correctly, in some
20 instances there's no investment shown for certain of
21 these investors.

22 What does that represent? For instance,
23 Mr. McCardle where he purportedly gets four membership
24 units on or about December 6, 2008, where now we're
25 above 100 percent interest in the LLC, that's based on

1 an assignment of interest. Does that mean Mr. McCardle
2 didn't invest any cash that the Division is aware of?

3 A. After several interviews, Your Honor, what we
4 found is that a lot of the people that are listed that
5 don't have cash investments, they were being handed
6 membership units for bringing somebody in. For
7 instance -- let me see here.

8 Q. Let's say Mr. Schnaible, or something, on the
9 first page --

10 A. Mr. Schnaible was actually introducing
11 Mr. Shudak to investors. So he would get a membership
12 interest or units for introducing somebody that actually
13 invested cash in the company.

14 Q. So, some how, some way Mr. Schnaible, although
15 he didn't invest any dollars, per se --

16 A. Yes. He was just given units.

17 Q. He was given some units in Parker Skylar?

18 A. Because, yeah, because he brought an investor
19 in.

20 Q. And, for instance, is that the same, is that the
21 same situation with Mr. Lamer, Mr. McCardle, Mr. Lamer
22 again, and Mr. Peterson, on the top of the second page
23 of this exhibit?

24 A. Yeah. All of those, all of those guys that did
25 not invest cash were given units for, for somehow or

1 another for either bringing an investor in or doing some
2 kind of a favor for Mr. Shudak, if I can put it that
3 way.

4 Q. So as far as restitution being ordered possibly
5 in this proceeding, they don't participate in the
6 restitution itself, correct?

7 A. Only because they didn't invest cash, sir.

8 Q. Okay. And in the instance of the Falbe
9 situation, that's the attorney, that Nascent
10 Investments, LLC --

11 A. He was the one that loaned, actually, Parker
12 Skylar \$250,000 towards the project.

13 Q. So he lent money, wasn't an actual investor, he
14 was a lender?

15 A. He was a lender, hard money lender.

16 Q. And in return for that loan, he got his security
17 interest, I guess, and 20 units of Parker Skylar?

18 A. That's correct.

19 Q. So really all you're showing is, based on your
20 investigation, with respect to dollar investments by
21 what we refer to as investors --

22 A. That's correct, sir.

23 Q. -- are the people here that put money into the
24 project as an investment, had an investment purchase
25 agreement, had a note, et cetera, right?

1 A. That's correct, sir.

2 Q. Okay. And it's your testimony with respect to
3 some of these investments, or some of the use of the
4 money, if I understood you correctly, for instance, with
5 Mr. Olp, and I don't know what the church is that they
6 were -- let me find it on S-38 -- Church USA, you're not
7 testifying where the money came from, but apparently
8 those individuals may have received money from that
9 investment. Is that your, part of your investigation?

10 A. If they received money, Your Honor, I didn't do
11 the tracking. We left that up to our forensic
12 accountant to show where that money went in and where
13 that money went out. She is the one that mapped that
14 out.

15 Q. So you just don't know exactly what that has to
16 do with or anything?

17 A. No, sir.

18 Q. Okay. I don't have any other questions other
19 than -- oh, one other thing.

20 With respect to the units that were given to
21 individuals, or transferred to individuals by assignment
22 by Mr. Shudak with respect to, perhaps, bringing in
23 investors by some of these individuals, did you ever
24 subtract out those units to see if, in fact, those units
25 had nothing to do with the purported 100 units in the

1 actual LLC itself?

2 A. I left that up to the forensic accountant, sir.

3 ALJ STERN: Okay. All right. Any redirect?

4 MR. MILLECAM: Yes. Just a few questions, Your
5 Honor.

6 ALJ STERN: Okay.

7

8 REDIRECT EXAMINATION

9 BY MR. MILLECAM:

10 Q. Mr. Morin, during cross-exam you were asked if
11 you could verify any investor amounts shown in Exhibit
12 S-48.

13 You were able to, through investor interviews,
14 verify some of these amounts; is that correct?

15 A. Yes.

16 Q. And in your previous direct you described
17 interviews with Gary Bates, Rosan Knapp, and Berendes;
18 is that correct?

19 A. That's correct.

20 Q. And you described how in those interviews you
21 confirmed that they paid the amounts in their purchase
22 agreements?

23 A. Yes, sir.

24 Q. You were also present for the testimony of
25 Ms. McDermitt-Fields yesterday; is that correct?

1 A. Yes, I was.

2 Q. And do you recall that she testified that on
3 numerous occasions she was able to substantiate their
4 investment amounts through bank accounts and bank
5 deposits?

6 A. Yes, sir.

7 Q. Mr. Schulman asked you to explain, and we talked
8 too, in particular about Mr. John Schnaible and
9 consideration persons had received and how that was
10 depicted in this exhibit. Mr. Schnaible is not depicted
11 with a dollar amount.

12 Is it fair to say that this exhibit only shows
13 dollar amounts where cash was the consideration for an
14 interest in Parker Skylar?

15 A. Yes.

16 Q. I'm going to go ahead and have you open up, just
17 briefly, Exhibit S-29.

18 Mr. Morin, do you recognize Exhibit S-29?

19 A. Yes.

20 Q. Am I correct in reading it saying Assignment of
21 Interest in Parker Skylar & Associates, LLC?

22 A. Yes, you are.

23 Q. Let's go ahead and read that first paragraph if
24 you would?

25 A. "Parker Skylar & Associates, LLC, an Arizona

1 limited liability company (Grantor), for good and
2 valuable consideration, the adequacy of which is hereby
3 acknowledged, hereby issues, sells, sets over transfers,
4 assigns and conveys to John Schnaible (Grantee), a
5 six percent, (6%) Percentage Interest as a Member of
6 Parker Skylar & Associates, LLC, an Arizona limited
7 liability company."

8 Q. So according to your own earlier testimony where
9 it describes as good and valuable consideration, which
10 has hereby been acknowledged, you've received no
11 evidence that that consideration is cash?

12 A. That's correct.

13 Q. Who is signing this document on behalf of Parker
14 Skylar?

15 A. Patrick Shudak.

16 Q. Okay. And did someone sign an acceptance of
17 assignment? Do you see a signature there?

18 A. That is John Schnaible's signature.

19 Q. Is this assignment of interest similar to the
20 assignment of interest that the other investors
21 received?

22 A. Yes, sir.

23 Q. Including those that paid cash for their
24 investment?

25 A. That's correct.

1 MR. MILLECAM: No further questions.

2 ALJ STERN: I have a question for you,
3 Mr. Morin.

4

5 FURTHER EXAMINATION

6 BY ALJ STERN:

7 Q. Where did you, for instance Mr. Schnaible, where
8 would you have obtained this Parker Skylar assignment,
9 or for that matter --

10 A. These were all, when we, when we sent out
11 either, actually not subpoenas, when we spoke to
12 investors, all of these documents came from a bunch of
13 different investors. So we pretty much picked them
14 apart, pulled out all the investor documents, tried to
15 find all the numbers that we could possibly find, and I
16 used that to help create the chart.

17 Q. Okay. Now, with respect to Mr. -- so, for
18 instance, any of these individuals who, McCardle,
19 Schnaible, Lamer, we don't really know exactly what
20 happened with respect to how they got their assignments,
21 but they did receive them?

22 A. Yeah. We only, the only data that I used was
23 what was in front of me. I did not assume or make any
24 assumption if I couldn't speak with anybody or have the
25 data in front of me.

1 Q. So you don't know, for instance, how you came
2 across an assignment to Jim Peterson from Parker Skylar
3 for three membership units? You don't know why that
4 was --

5 A. No.

6 Q. And for instance, I notice here, again, I'm --
7 you may not be able to tell me this -- Mr. Olp -- the
8 accountant was here yesterday and this document, I
9 think, was examined -- but he apparently invested
10 \$128,000. He's the minister. But on that other
11 exhibit, certain monies are apparently paid out to Mr.
12 Olp and/or a church of, he's affiliated --

13 A. Church USA.

14 Q. But does that mean that that's what the
15 remaining amount is invested here on S-48 or --

16 A. Just from the investor documents, just that
17 amount that we got from the investor documents.

18 Q. And we don't know anything at all about the
19 amount that was paid to the church and Mr. Olp?

20 A. I don't.

21 Q. You don't. Okay.

22 A. Our forensic accountant might.

23 ALJ STERN: Okay. I don't think I have any
24 other questions.

25 Anything else, Mr. Schulman?

1 MR. SCHULMAN: No, Your Honor.

2 ALJ STERN: Nothing, Mr. -- okay.

3 Thank you, Mr. Morin. You're excused.

4 Does the Division have any more witnesses they
5 wish to call?

6 MR. MILLECAM: Yes. As we discussed earlier,
7 since Mr. Schwank is here we were going to have him come
8 and substantiate Exhibit S-58.

9 ALJ STERN: Okay. Let's have Mr. Schwank come
10 forward.

11

12 MARTIN HENRY SCHWANK,
13 Recalled as a witness on behalf of Staff, having been
14 first duly sworn by the Certified Reporter to speak the
15 truth and nothing but the truth, was examined and
16 testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. MILLECAM:

20 Q. Good morning, Mr. Schwank.

21 A. Good morning.

22 Q. Thanks for being here and appearing once again.
23 Very quickly, the limited focus of this is just to
24 substantiate what Exhibit S-58 is.

25 Do you have that in front of you?

1 A. Yes, I do.

2 Q. Do you recognize Exhibit S-58 as an e-mail you
3 sent to Mr. Dee Morin on Tuesday June 18th, 2013?

4 A. Yes, I do.

5 Q. Attached to this -- well, first off, can you
6 describe the purpose of this e-mail?

7 A. When I was here yesterday I heard the testimony
8 about verification documents not being in the possession
9 of the court, all of which I had at home, since we had
10 gone through this massive vetting process years ago. So
11 I provided them.

12 Q. You provided documents for Mr. Bates,
13 Mr. Berendes, and Mr. Lamer?

14 A. Yes, I did.

15 Q. Those documents are the attachments to this
16 e-mail; is that correct?

17 A. Yes.

18 Q. Can you describe, briefly, how you came in
19 possession of the documents attached to this e-mail?

20 A. Again, during the vetting process back in, we
21 were performing, we basically asked everybody to confirm
22 through wire transfer documents or copies of their
23 checks, their actual investment amounts and things so
24 that we could try and sort through who actually had
25 dollars in this. So that was something that had been

1 accumulated by several of us. And then as I became the
2 manager I just kept everything.

3 Q. So it's your testimony the documents attached to
4 this e-mail are Mr. Bates', Mr. Berendes', and
5 Mr. Lamer's response to your request for documents
6 substantiating their investment in Parker Skylar?

7 A. Yes, it is.

8 MR. MILLECAM: Your Honor, we are going to move
9 that Exhibit S-58 be moved into evidence.

10 ALJ STERN: You still object, right?

11 MR. SCHULMAN: Yes.

12 ALJ STERN: Okay. I have a question for you,
13 sir.

14

15 EXAMINATION

16 BY ALJ STERN:

17 Q. With respect to certain documents, primarily, I
18 guess I'm concerned about the ones that are marked 62,
19 Bates No. 6203 and 6204. They're apparently bank
20 documents from something called Enterprise Bank. And
21 these, are these the ones that relate to Mr. --

22 A. Lamer.

23 Q. -- Lamer; is that correct?

24 A. Yes. That's what we were given. One of them
25 says Poling Place, LLC, which is I believe Mr. Lamer's.

1 And the second one actually has Frank Lamer's name on
2 it.

3 Q. But the Division's own exhibit --

4 What's the number of that exhibit where the --
5 is it S-48, right?

6 MR. MILLECAM: Are you referring to the one we
7 just went over with Mr. Morin?

8 ALJ STERN: What?

9 MR. MILLECAM: Are you referring to the exhibit
10 we just went over with Mr. Morin?

11 ALJ STERN: Yes.

12 MR. MILLECAM: Yes, Your Honor. That's Exhibit
13 S-48.

14 ALJ STERN: Okay. So I see Lamer has 128,000
15 shown on that, and then he also got apparently two more,
16 somehow it appears that he received two more membership
17 interests. That's what that document shows, that
18 Exhibit S-48?

19 MR. MILLECAM: Yes.

20 ALJ STERN: Okay. And that's for one of those
21 assignments?

22 MR. MILLECAM: Yes, Your Honor.

23 MR. SCHULMAN: Your Honor.

24 ALJ STERN: Yes, sir.

25 MR. SCHULMAN: This document is dated December

1 5th, 2007.

2 ALJ STERN: Uh-huh.

3 MR. SCHULMAN: Exhibit 48 is in chronological
4 order, I believe, and begins on January 7th, 2008. This
5 is part of the problem with introducing an exhibit where
6 we don't have a witness to ask questions about. These
7 transactions are a month apart, and you're trying to
8 connect the two.

9 ALJ STERN: Okay. Just wait a minute. So
10 you're saying -- I see what you're saying. You're
11 saying the \$100,000 --

12 MR. SCHULMAN: Well, first of all, I don't have
13 a clue who Poling Place II is, but if we're going to
14 accept this witness's testimony that that's Mr. Lamer,
15 the earliest investment we have from Mr. Lamer is a
16 month later on January 7th, 2008.

17 THE WITNESS: Excuse me, Your Honor. I cannot
18 confirm and testify that Poling Place is him, and I
19 don't want to misrepresent that. I'm just giving the
20 documents that Frank Lamer sent saying here's proof of
21 my investment, thus the one says Poling Place, the other
22 says Frank Lamer, that's what I asked for. They're both
23 made out to Patrick Shudak. But I don't have any
24 knowledge whatsoever of Poling Place being him.

25 BY ALJ STERN:

1 Q. Okay. But your testimony, if I understand you
2 correctly, is you received these two documents that are
3 part of the S-58, and they are, I guess, bank wire
4 confirmations?

5 A. Yes.

6 Q. One's dated December 5th, 2007 for \$100,000, and
7 the other one is dated December 28th, 2007 for \$28,000,
8 right?

9 A. Right. I mean when I -- there's a cover letter,
10 or e-mail from Frank saying, basically, Marty, here's
11 the wire transfer proofs of my investments. And this is
12 what I was sent.

13 ALJ STERN: Okay. Well, they're pretty
14 questionable, but they're not, they're not what I call
15 the best evidence, and I can understand your objection,
16 and I appreciate your objection, Mr. Schulman. There
17 are investment agreements that correlate, I believe,
18 with these.

19 Now, the investment agreements, for instance,
20 for Mr. Lamer, are they back in Exhibit S-19 or
21 something, is that where that is?

22 MR. MILLECAM: Just give me one second and I'll
23 tell you exactly which exhibit it is. Exhibit S-20,
24 Your Honor.

25 ALJ STERN: Frank & Associates, LLC. Now the

1 plot thickens.

2 Well, I don't know how many times I have seen
3 evidence like this come in in these administrative
4 proceedings, and it's really roughshod.

5 But I believe overall the weight of the evidence
6 is that Mr. Lamer did invest some monies with this
7 entity, Parker Skylar. And I'll admit Exhibit S-58 for
8 whatever it's worth. We've already gotten into evidence
9 of investment agreements that have amounts in them. I
10 think it lends further support to the claim of an
11 investment of \$128,000 by Mr. Lamer, and respective
12 amounts by the other individuals that were apparently
13 sent to Mr. Schwank. So Exhibit S-58 will be admitted.
14 Okay.

15 (Exhibit S-58 was admitted into evidence.)

16 ALJ STERN: Anything else for this witness?

17 MR. MILLECAM: No further questions.

18 ALJ STERN: Okay. Thank you, sir.

19 Any other witnesses for the Division?

20 MR. MILLECAM: No, Your Honor.

21 ALJ STERN: Okay. Mr. Schulman, want to take a
22 minute to think about this, or are you ready to proceed,
23 or what's going to happen?

24 MR. SCHULMAN: Your Honor, if we can just get
25 confirmation that the Division rests, is that --

1 MR. MILLECAM: We rest our witnesses. I was
2 planning on doing a brief closing statement.

3 MR. SCHULMAN: I understand.

4 Your Honor, in that case, Mr. Shudak rests as
5 well. We're not going to call any witnesses.

6 ALJ STERN: All right. Just a minute. Okay.

7 Do you want to take a few minute recess and do
8 your closing statement, or are you ready to proceed?
9 Whatever you want to do.

10 MR. MILLECAM: A few minute recess would be
11 good.

12 ALJ STERN: Okay. Let's come back in about
13 10 minutes, 11:30.

14 MR. SCHULMAN: Your Honor, just as a procedural
15 matter, before we do the closings, because this may
16 influence my closing.

17 ALJ STERN: Yes.

18 MR. SCHULMAN: Could we talk about what your
19 expectations are going to be post-hearing?

20 ALJ STERN: I would expect probably in a certain
21 number of days you can file a brief with respect to your
22 position on this matter with respect to the allegations
23 of the Division, the facts they proved, the various
24 alleged violations of the registration provisions, the
25 antifraud provision, and I think the Division also

1 raised the issue of controlling person under A.R.S.
2 44-1999, if I remember correctly.

3 MR. SCHULMAN: And you'll just be asking for
4 simultaneous briefs?

5 ALJ STERN: Yeah, I think so.

6 MR. SCHULMAN: Just one brief, or opportunity to
7 file a rebuttal brief?

8 ALJ STERN: If you feel a need, I might
9 entertain that wish from you. That's up to you all.
10 Okay?

11 MR. SCHULMAN: Yes. Thank you.

12 ALJ STERN: All right. Let's take a break for
13 about ten minutes or so and then we'll come back.

14 (Recess taken from 11:23 a.m. to 11:39 a.m.)

15 ALJ STERN: Returning to the record.

16 Are we ready to proceed with closing statements?

17 MR. SCHULMAN: Your Honor, before we do that, I
18 just spoke with counsel for the Division, and I just
19 wanted to open up our case briefly just to move that
20 Exhibit S-56, which is the Parker Skylar operating
21 agreement, be admitted into evidence.

22 ALJ STERN: Okay.

23 MR. SCHULMAN: I apologize. I thought that that
24 had been moved into evidence.

25 ALJ STERN: Any objections? I doubt it.

1 MR. MILLECAM: No objections.

2 ALJ STERN: Exhibit S-56 is admitted into
3 evidence.

4 (Exhibit S-56 was admitted into evidence.)

5 ALJ STERN: Anything else?

6 MR. SCHULMAN: No. Thank you, Your Honor.

7 ALJ STERN: Anything else? No? Okay.

8 Mr. Millicam, it's your place to make your
9 statement.

10 MR. MILLECAM: Thank you, Your Honor.

11 The evidence that we have reviewed over these
12 past few days has shown that Parker Skylar was the money
13 man in the real estate development, Cochise County 1900.
14 Parker Skylar was to obtain financing and capitalization
15 to purchase land and to get that land through the
16 entitlement phase so that houses could be sold. Parker
17 Skylar was the entity that raised this money, and Parker
18 Skylar was the entity that entered into agreements with
19 all investors.

20 Mr. Shudak is the person that controlled Parker
21 Skylar. All the agreements that the investors received
22 from Parker Skylar are signed by Mr. Shudak. Mr. Shudak
23 is the person that primarily met with the investors and
24 sold them their investments. In fact, we had one
25 investor testify that he thought he was investing

1 directly with Mr. Shudak because Mr. Shudak was so
2 involved with the sales process.

3 These investors who invested received two
4 securities from Parker Skylar. They received notes.
5 The notes for 14 percent interest; the term of those
6 notes was typically two years. On top of that, the
7 investors received membership interests in Parker
8 Skylar. These interests entitled them to an equity
9 interest. In neither case were these securities
10 registered with the Commission, and in no case was
11 Parker Skylar registered as an entity that could sell or
12 deal in securities.

13 When these investors planned on investing, they
14 did not plan on participating and managing this entity.
15 Again, as one investor testified, he expected merely to
16 get his money back after a year. That was all he cared
17 about.

18 When selling this investment to these investors,
19 Parker Skylar omitted information that would have been
20 material to an investor. For starters, even though
21 Mr. Shudak was the money man in this development, it
22 turns out this money man had some problems of his own.
23 He had, beginning in mid 2008 and beyond, he had
24 lawsuits filed against him by his own creditors and
25 other entities. Some of these were brought to judgment

1 by the end of 2009. And after some of the complaints
2 had been filed, Mr. Shudak continued to solicit some of
3 the investors.

4 The Parker Skylar investors who received the
5 membership interest received a document stating they
6 were receiving a percent of Parker Skylar. It had the
7 percent symbol, it had the word percent behind it.
8 Standard usage of that is 1 over 100. As it turned out
9 they were receiving 1 over 133.

10 Mr. Shudak was the only person with information
11 regarding who these investors were, and he was the only
12 person who was in the position to keep track of how many
13 membership interests were being sold, and to not keep
14 track of the continuing issuance of these is at best
15 reckless.

16 Mr. Shudak omitted to inform investors that he
17 had entered into a loan agreement with Mr. Eric Falbe,
18 Nascent Investments. He also omitted to inform them
19 that Mr. Falbe considered the loan in default, which he
20 had done prior to several investors being solicited.
21 Mr. Falbe, in fact, has attempted to enforce his rights.
22 Even though Mr. Shudak attempted in late 2009 to wash
23 his hands of these investments, the messes remain for
24 some of these investors.

25 In the worst case scenario, the Nascent loan

1 that was failed to be disclosed, Mr. Falbe, not only has
2 he remained in Parker Skylar, Mr. Shudak has responded,
3 but he's named actual Parker Skylar investors. And his
4 complaint says possibly all Parker Skylar investors.
5 The potential to be a party to a lawsuit to a hard money
6 lender is certainly something an investor would have
7 liked to have known prior to investing.

8 These investors did not have real estate
9 development experience. After Mr. Shudak resigned, they
10 were forced to salvage as best they could their
11 investment. The evidence presented shows that has not
12 gone well, and they in fact were not the experts that
13 they should have been to manage this.

14 The property is currently behind on its loan.
15 It has a nearly \$1 million payment due, and the
16 investors were unable to gather money for that. The end
17 result being that they will most likely lose any
18 interest in the property that their membership interest
19 would have entitled them to. These investors did not
20 receive payments on their notes or any profit of any
21 kind.

22 Arizona is a strict liability state.
23 Restitution is based on the amount paid. There is no
24 proximate cause requirement.

25 The Division has shown that these investors

1 invested the amounts in their investment documents, did
2 not receive payment for it. The Division has shown that
3 Pat Shudak was the controlling person of these entities,
4 as such he is liable to the same extent as the entities
5 where the securities were issued.

6 For these reasons the Division requests that
7 Your Honor order full restitution along with the
8 appropriate penalties in this matter. Thank you.

9 ALJ STERN: Let me just clarify. You are going
10 to go with a default order, I assume, against Parker
11 Skylar?

12 MR. MILLECAM: Parker Skylar already has a
13 default order against it, yes.

14 ALJ STERN: Okay. And Promise Land, consent or
15 default?

16 MR. MILLECAM: Default.

17 ALJ STERN: Okay. All right. Go ahead.
18 Anything else, Mr. Schulman?

19 MR. SCHULMAN: Your Honor, I know that you've
20 been doing this even longer than I have, but I don't
21 know that I have ever seen a case like this. We've
22 concluded a three day hearing and I don't know how many
23 investors there purportedly are and I don't know what
24 the amount of restitution is that's being asked by the
25 Division. And I would remind the tribunal that it's the

1 Division's burden to prove their case. It's not my
2 client's burden to disprove their case. And we
3 respectfully believe that the Division has not met its
4 burden in this case.

5 Very quickly, Your Honor, and I'll just be
6 candid, I think that, while I have a lot to say about
7 this case, it's going to be best reserved for the
8 post-hearing briefs. But with respect to the
9 registration issues, from the little bit of evidence
10 that we heard directly from investors, all of these
11 investors had some type of a preexisting relationship
12 with either Mr. Shudak or an acquaintance of
13 Mr. Shudak's or, or Mr. Thome. There is no evidence of
14 any public advertising or any general solicitation that
15 took place in this case. So I'm sure, not to the
16 surprise of the Division, we're going to be arguing that
17 this meets all the tell tale signs of a private offering
18 under Arizona law.

19 With respect to the fraud allegation, I just
20 want to make it very clear. We have only heard
21 testimony from three investors in this case. So when
22 the Division represents that Mr. Shudak omitted certain
23 purported material information in his alleged
24 solicitation of these investors, there's absolutely no
25 evidence of that. In fact, we had three witnesses who

1 testified, and they all gave very, very different
2 stories about the information that they received from
3 Mr. Shudak, the information they considered from
4 Mr. Shudak, and the information they relied upon from
5 Mr. Shudak.

6 So one of our, our main contentions is going to
7 be that there is no evidence of fraud with respect to
8 any of the investors, but most certainly with respect to
9 the investors who we never heard from in this case.
10 This is not an instance where the Division can take some
11 type of fraud on the market theory, or argue that
12 there's some type of class certification that exists
13 with whatever number of investors they are going to
14 ultimately identify as part of their case. They have
15 failed to produce any evidence with respect to the vast
16 majority of these investors about what they were told or
17 what they weren't told.

18 And I'll point out that in most cases, Your
19 Honor, as you well know -- I understand that not every
20 investor gets called to testify -- but in most cases you
21 have testimony from the issuer or the promoter who is
22 asked questions about what was said or what wasn't said
23 to investors. Here, there is no evidence on either side
24 of the table about communications taking place between
25 Mr. Shudak and all but three of the investors. So they

1 have, the Division has completely failed in any, any
2 semblance of how you want to define it of producing any
3 evidence of fraud with respect to the vast majority of
4 the investors in this case.

5 Then, lastly, with respect to what I think is
6 the third component of this case, which is restitution.
7 I will draw this quote from Mr. Millecam's closing. He
8 said that these investors tried to salvage this, this
9 project as best they could. That's just not the
10 evidence in this case, Your Honor. The evidence in this
11 case is that they came to a crossroads in 2009 to figure
12 out what to do with this project. And several investors
13 wanted to sell the real estate to try to get all their
14 money back. And there is evidence in the record that at
15 least one real estate expert believed that they could,
16 not only get their money back, but they could get more
17 than their money back. And the evidence that has come
18 forward in the last two days is that some members of
19 this investor group took control of it and decided that
20 they could make more money if they held on to the
21 property and took it to final plat. And the testimony
22 that we have from all these investors is that, in
23 hindsight, that was a really bad decision on their part.

24 So not only have they not taken the necessary
25 steps to try to mitigate their damages, it's possible

1 that all of their damages are based on the fact that
2 they decided to try to make more money than just try to
3 get their money back.

4 So we respectfully disagree with the Division's
5 contention that their claim is they're not going to have
6 to show proximate cause, and we certainly believe that
7 the law of restitution that is well settled in Arizona
8 applies to the Division the same way it applies to any
9 plaintiff in Arizona. And we'll look forward to
10 briefing that law for you in our closing brief.

11 So with respect to all three of these issues,
12 the registration issues, the fraud issues, and the
13 damages issues, we believe that the Division has not
14 satisfied their burden with respect to any of the three.
15 Thank you.

16 ALJ STERN: Okay. Thank you.

17 With respect to briefing schedule. I'd say,
18 today is the 19th of June. So how about filing by, how
19 is August 9th, your initial briefs? If you want, gives
20 you about, that's about 45 days, I believe.

21 MR. SCHULMAN: Your Honor, my only, I would just
22 like to try to get an idea of when we'll have the
23 transcript available.

24 ALJ STERN: That's ten business days after
25 today. So if you want a little more time than that, I

1 can give you a little more time, it's not a problem.

2 MR. SCHULMAN: So in about two weeks we'll have
3 the --

4 ALJ STERN: Roughly. Yeah, two weeks. So today
5 is the 19th of June, so you're looking at roughly July
6 3rd. So that's sort of -- so if you want to go by that
7 let's go, how about July 21st? Do you want to file your
8 closing briefs then?

9 MR. SCHULMAN: Your Honor, my only issue with
10 that, I have got a summer vacation planned that's just
11 one week and it's right before that. Could we just go
12 one more week after that?

13 ALJ STERN: July 30th -- I mean, August 30th.
14 What did I say? July 30th?

15 MR. SCHULMAN: Oh, yes, you did.

16 ALJ STERN: I'm sorry. I didn't mean that.
17 July, I'm saying August, August 9th, how's that? That's
18 for the closing brief. Does that give you time? Or do
19 you want more time than that?

20 MR. SCHULMAN: That's fine, Your Honor.

21 ALJ STERN: How's that for you, Mr. Millecam?
22 Is that enough time?

23 MR. MILLECAM: Yeah, that's fine.

24 ALJ STERN: Yeah, I didn't mean to do that in
25 July. August 9th.

1 And then do you want to do a reply brief?

2 MR. SCHULMAN: Your Honor, I would just like, in
3 the order, an opportunity that they are maybe not
4 required, but if the parties desire to file a rebuttal
5 brief.

6 ALJ STERN: All right. If you want to do any
7 rebuttal from the 9th, the 30th of August, how's that?

8 MR. SCHULMAN: That's fine, Your Honor.

9 MR. MILLECAM: Your Honor, the Division would
10 also like to have an opportunity to file a rebuttal.

11 ALJ STERN: I wouldn't preclude you from that.
12 You can file a rebuttal too. We just love to have that
13 happen. Okay.

14 Anything else?

15 MR. SCHULMAN: No.

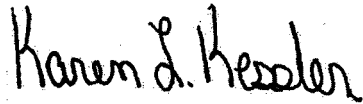
16 ALJ STERN: Thank you. That concludes this
17 proceeding.

18 (The hearing concluded at 11:54 a.m.)
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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.
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7 I, KAREN L. KESSLER, RPR, Certified Reporter
8 No. 50821 for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full, true
10 and accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.
13

14 WITNESS my hand this 3rd day of July, 2013.
15
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17



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19 KAREN L. KESSLER, RPR
20 Certified Reporter
21 Certificate No. 50821
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